LAW ENFORCEMENT *on* NATIONAL FORESTS CALIFORNIA DISTRICT

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UNITED STATES FOREST SERVICE FOR CALIFORNIA

COERT DU BOIS
District Forester

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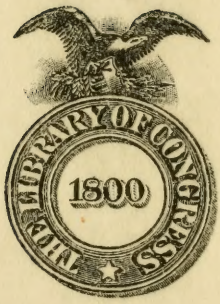

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DEPARTMENT OF AGRICULTURE.
FOREST SERVICE, DISTRICT NO. 5.
COERT DU BOIS, *District Forester.*

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LAW ENFORCEMENT ON NATIONAL FORESTS,

CALIFORNIA DISTRICT.[1]

These instructions are supplemental to the National Forest Trespass Manual. Copies are numbered and a record will be kept of all persons to whom copies are entrusted. They must be kept confidential by all Forest officers. Much harm may result from unauthorized persons becoming conversant with our procedure in this work.

Forest officers will be accountable for familiarity with these instructions and for action in accordance with them. The education of reliable short-term men in the searching for and preservation of clues is also desirable, since guards will often be first at the scene of a trespass, especially of fire. But this is most effective when done by oral explanation, supplemented by the mimeographed portion of these instructions, which will be provided. Only in exceptional cases should guards be given the complete instructions.

DUTIES.

GENERAL.

Law enforcement, all along the line, is now a primary duty of all Forest officers. The special law enforcement work will be confined mostly to investigation and the working up of its results for use in criminal court actions; but minor cases, in justice's court, may have to be conducted by rangers or other investigators.

[1] Prepared under the direction of the District Forester by C. L. Hill, Forest examiner, assisted by C. V. Brereton, National Forest examiner. Legal phases prepared by, or with the collaboration of, H. P. Dechant and C. S. Brothers, assistants to the solicitor.

Investigation.—In fire cases other than lightning fires, and in all other violations of laws or regulations applicable to the National Forests and properly subject to their investigation, every special investigator and every district ranger, on his own district, will be expected to start, themselves or to make other provision for, an immediate investigation looking toward the detection and prosecution (or other appropriate action) of those responsible for the offense, and to conduct this work with the best energy, knowledge, and skill at their command.

Reports.—An informal report (verbal or written) of the occurrence of the offense shall be made, immediately on its discovery, or as soon thereafter as communication can be established or the work permits, to the supervisor of the Forest for his information. This is especially necessary for decisions which he or the district forester may have to make respecting civil or administrative actions. Further reports shall be made as hereinafter provided (See pages 68 and 70) or as specially called for by superior officers.

Assistance.—If too many fires or other cases occur for a ranger to handle alone, or if difficult cases develop in which he desires assistance, the ranger on his Forest who attended the San Francisco conference, if there is one, may be called upon by the supervisor. If this is not possible, the supervisor may request from the district office the assignment of one of the special investigators, with headquarters at San Francisco, who will be available for such use.

District rangers will thus be expected to use every possible effort of their own in this work; but they should not hesitate for any reason, if they need it, to call for additional help. Constantly recurring fires or other offenses will indicate that local action must be stiffened or help requested.

Supervision.—Supervisors will be responsible for the attitude of Forest officers to this work and for its vigorous prosecution on their Forests. Inspection and check must be maintained on the investigative work done by each man. Not every man is adapted to this work, and assignments to it should be subject to weeding. Investigative work should be judged on its merits; failure to convict may not be the investigator's fault. If a man

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fails to get results reasonably to be expected, it may be desirable to let him work on a case or two with a specialist or other experienced man before trying more cases alone, rather than to displace him. He should not usually be given charge of other cases until he has had such coaching.

LINES OF WORK.

Fires.—Law enforcement is concerned with man-caused fires. Until fires of unknown origin can be proved otherwise, they must be viewed as man caused, with respect to enforcement investigation. With respect to all such fires, the ranger has two duties: (1) To see that the fire is put out; (2) to see that every possible measure is taken to trace the author (or prove that the fire was *not* man caused).

Investigation must be started even before suppression, in order that clues in the immediate vicinity of the fire may not be obliterated. But neither can suppression be neglected. This means that careful planning and scheduling of both lines of work with respect to all men who will be early on the scene of the fire will be necessary, first by the supervisor as a Forest policy, then by the ranger in charge of each district. Because investigation is new, and less well understood by the field men, its direction must be given special attention by all administrative officers, and fire plans must be so arranged as to permit pushing both lines of work simultaneously. Fire plans and organization must never keep the ranger sitting in the office as a dispatcher. Short-term men must be assigned with reference to the requirements of, and their capacity for, investigation, and should be instructed as provided on page 1 of this manual.

Fish and game.—The new Regulation T-7a marks the entrance into our National Forest policy of a more vigorous attitude toward fish and game. These are now to be recognized as a national asset, which we are as bound to conserve on the National Forests as we are to conserve our timber or forage assets. The Forest Service policy regards use of such a resource which is consistent with maintenance of supply as legitimate, but as illegitimate any use in excess of that requirement. This raises en-

forcement of the fish and game laws and cooperation with State authorities in such enforcement from a matter of incidental good will to one of direct duty. The change in community sentiment which must be wrought to give thoroughgoing game law enforcement community sanction is more radical than that necessary in respect to fire; but a thorough understanding of and belief in the Service policy by every Forest officer will accomplish the result.

Grazing.—Enforcement of grazing regulations has suffered in many cases from the same hesitancy in respect to community good will which affected fire-law enforcement prior to the push on the latter in 1918. But the better stockmen prefer a ranger who is able both to give them proper protection *and* to make them live up to the requirements of their permits. The fearless and impartial enforcement of grazing regulations may be expected to bring the same gains in community esteem, and confidence in our ability to administer the Forests, which are resulting from fire-law enforcement.

Grazing enforcement must bear upon cattle straying over allotment boundaries as well as upon sheep, and must not overlook violation of cattle-salting and sheep-bedding permit requirements. Much of this work is purely administrative and will not come to the law-enforcement investigator. But when grazing trespass is consistently gone after by all Forest officers, many unreported cases will probably develop, and may require investigative work. Investigations of grazing trespass must be particularly careful to obtain exact and, if possible, first-hand facts with respect to numbers and ownership of stock in trespass, exact location with respect to boundaries of National Forest land, exact terms of permit violated, if any, and all other essential points.

Other trespasses.—Timber, occupancy, property and other trespasses on the National Forests may require law-enforcement investigation. In timber trespass, however, the facts are usually plain, and action is seldom criminal. Law enforcement investigation, therefore, will seldom be required, unless the identity of the trespasser or the time and manner of committing the trespass are in doubt.

Prevention.—In all law enforcement efforts we must not forget prevention propaganda. An ounce of prevention is still worth a pound of cure. We do not hold every stockman to be an incendiary, nor must we let such an impression arise. Warn them that we intend to catch every incendiary and punish him; but convey to stockmen and all other cooperators appreciation of good work done. Converse with campers, and use the occasion for friendly and unobtrusive warning of the danger with fire, and advice on how to avoid it. This will make us friends rather than enemies, and strengthen our position in every way.

AUTHORITY.

FEDERAL.

Forest officers have authority, derived from Federal statutes, in enforcement of Federal laws, or regulations of the Department of Agriculture, upon National Forests.

STATE.

If they have State deputy fire warden and game warden appointment, they have, under the statutes of the State, the authority, protection and privileges of any peace officer of the State of California.[2] Deputy fish and game warden appointments also carry certain advantages with respect to fire law enforcement. (*See under* Search Warrants, p. 65.) All rangers should, therefore, be certain that they have deputy State fire warden and fish and game warden appointments. If not, make request for them through the supervisor.

Violations of law touching private rights in National Forest communities are not ordinarily subject to police action by Forest officers; but we have the right of any citizen to lay facts before the proper authorities, or to advise others how to do so. Action in the latter direction, however, obviously demands caution and judgment.

ADVICE AND BACKING.

When in doubt, especially on legal questions, ask for advice through the supervisor. Circumstances may

[2] Except that of arrest without warrant for offenses not committed in the officer's presence.

sometimes require immediate action, and thus not permit delay for advice. When a ranger acts on the best judgment at his command, his actions and recommendations will be backed by the District Office. Legal help will be provided on request for conduct of all important court cases.

LAWS AND REGULATIONS AND THEIR APPLICATION.

A man can not know what he must prove unless he knows what constitutes a crime, according to the law in respect to the subject in hand. Where more than one course is possible, he must be able to advise intelligently what action should be taken. He should also have a reasonable degree of familiarity with what is acceptable in court as evidence, how it must be prepared and presented, and just what he can and can not do in dealing with suspects and trespassers. Even though he does not conduct the case in court the investigator will find this knowledge useful, from his interpretation and use of his first clue onward. The amateur detective fails more often on account of lack at this point than at any other, except perhaps the possession of the fundamental investigative type of mind.

FIRE.

FEDERAL FIRE LAW.

The Federal fire law, Act of March 4, 1909 (35 Stat., 1098) is as follows:

SECTION 52. Whoever shall willfully set on fire, or cause to be set on fire, any timber, underbrush, or grass upon the public domain, or shall leave or suffer fire to burn unattended near any timber or other inflammable material, shall be fined not more than five thousand dollars, or imprisoned not more than two years, or both.

SECTION 53. Whoever shall build a fire in or near any forest, timber, or other inflammable material upon the public domain shall, before leaving said fire, totally extinguish the same; and whoever shall fail to do so shall be fined not more than one thousand dollars, or imprisoned not more than one year, or both.

This law thus defines the following offenses:

1. Willfully setting on fire timber, etc., upon the public domain.

2. Willfully causing to be set on fire timber, etc., upon the public domain.

3. Leaving a fire or allowing one to burn unattended near any timber or other inflammable material on the public domain.

4. Building a fire in or near any forest, etc., upon the public domain and leaving it without totally extinguishing it.

SUPPLEMENTARY FEDERAL STATUTES.

Conspiracy.—The act of March 4, 1909 (35 Stat., 1096) defines the offense of conspiracy as follows:

SECTION 37. If two or more persons conspire either to commit any offense against the United States, or to defraud the United States in any manner or for any purpose, and one or more of such parties do any act to effect the object of the conspiracy, each of the parties to such conspiracy shall be fined not more than ten thousand dollars, or imprisoned not more than two years, or both.

It will be seen that conspiracy involves premeditation, to which more than one person is a party. An overt act is also necessary to complete the offense of conspiracy; but it is not necessary that the act be consummated. For example, going on to a National Forest to set a fire in accordance with a conspiracy so to do, if this can be proven, is sufficient, even though the conspirators were later frightened away and did not set it. It will be observed that the penalties for the offense of conspiracy may be greater than for a violation of the Federal fire laws, which the conspiracy may have aimed to commit. Liability for a conspiracy to commit an offense against the United States can not be escaped because the conspirator has actually committed the substantive offense at which the conspiracy aimed. Moreover, all the conspirators to a crime are liable, even though only a part of them participated in its actual commission. The value of the conspiracy law lies in its inclusive sweep as to offenders under its terms and its heavy penalties in the aggravated cases which conspiracy usually involves.

Perjury.—The act of March 4, 1909 (35 Stat. 1088) provides as follows:

SECTION 125. Whoever, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, shall wilfully or contrary to such oath state or subscribe any material matter which he does not believe to be true, is guilty of perjury, and shall be fined not more than two thousand dollars and imprisoned not more than five years.

SECTION 126. Whoever shall procure another to commit any perjury is guilty of subornation of perjury, and punishable as in the preceding section prescribed.

This statute is often of great usefulness in dealing with a recalcitrant suspect, even though its specific action be not invoked. (See p. 55.)

FIRE REGULATIONS OF DEPARTMENT OF AGRICULTURE.

Under the acts of June 4, 1897 (30 Stat., 11) and February 1, 1905 (33 Stat., 628) the Secretary of Agriculture is authorized to make rules and regulations to preserve the National Forests from destruction, and any violation of such rules and regulations is punishable by a fine of not more than $500, or imprisonment for not more than 12 months, or both, as provided for in the act of June 4, 1888 (25 Stat., 166).

Regulation T-1 provides as follows:

REG. T–1. The following acts are prohibited on lands of the United States within National Forests:

(A) Setting on fire or causing to be set on fire any timber, brush, or grass, except as authorized by a Forest officer.

(B) Building a camp fire in leaves, rotten wood, or other places where it is likely to spread, or against large or hollow logs or stumps, where it is difficult to extinguish it completely.

(C) Building a camp fire in a dangerous place, or during windy weather, without confining it to holes or cleared spaces from which all vegetable matter has been removed.

(D) Leaving a camp fire without completely extinguishing it.

(E) Building a camp fire on the Angeles National Forest and those portions of the Cleveland and Santa Barbara

National Forests which have been designated by the respective supervisors thereof without first obtaining a permit from a Forest officer.

(F) Using steam engines or steam locomotives in operations on National Forest lands under any timber sale contract or under any permit, unless they are equipped with such spark arresters as shall be approved by the Forest Supervisor, or unless oil is used exclusively for fuel.

(G) Disturbing, molesting, interfering with by intimidation, threats, assault or otherwise, any person engaged in the protection and preservation of the forests from destruction, including fire fighting, cutting and removing dead insect-infested or diseased timber, clearing the land of inflammable material of any kind, or doing or making preparation to do these or other acts necessary for the protection and preservation of a National Forest.

It will be seen that, by the penalties above prescribed, offenses under sections 52, 125, and 126, are felonies, while those under section 53 and the departmental regulations are misdemeanors.

FEDERAL JUDICIAL INTERPRETATIONS.

The offense of setting fire to timber, etc., on the public domain may be committed, even if the fire is started on adjoining private land. Judge Wellborn, United States District Court for Southern California, in his charge to the jury in the case of United States *v.* Henry Clay (fire trespass on the Cleveland National Forest) stated as follows:

"You are further charged that it is immaterial whether the fire of October 19, 1909, mentioned in this indictment, originated on private land, if it was set willfully, and if, in the course of nature and in view of all the surroundings, the said fire would reasonably be expected to be communicated to the public domain. A man has no lawful right to set fire to his own property, if he has reason to believe or intends that such fire will be communicated to the property of others and destroy it."

With respect to the meaning of the word "willful" in section 52, above quoted, Judge Whitson's instructions, (U. S. Dist. Court for Colorado) to the jury in the case of United States *v.* Fisher (fire trespass on the Colville National Forest) were as follows:

"And, as to the third count, whether he wilfully set on fire or caused to be set on fire the timber, slashings, or grass there growing. It is charged in the third count that the act was maliciously done; but it is not necessary, under the statute, that malice be shown. It is necessary to show that the act must have been wilful; that is, intentional. Not with intent, however, to burn the public domain, and destroy property, but purposely built the fire or purposely left it unattended or purposely failed to extinguish it. The purpose does not apply to the result, but the acts charged, for one wilfully, knowingly doing an act is presumed to intend the consequences which naturally may be expected to flow from such an act."

STATE FIRE LAW.

The California State law relating to forest fires (sec. 384 of the Penal Code as amended by the 1919 session of the legislature) provides as follows:

Any person who shall wilfully or negligently commit any of the acts hereinafter enumerated in this section shall be guilty of a misdemeanor, and, upon conviction thereof, be punishable by a fine of not less than fifty nor more than five hundred dollars, or imprisonment in the county jail not less than fifteen days nor more than six months, or both such fine and imprisonment, except that in the case of an offense against subsection five of this section, the fine imposed may be not less than ten dollars.

1. Setting fire, or causing or procuring fire to be set to any forest, brush or other inflammable vegetation growing on lands not his own, without the permission of the owner of such land; provided, that no person shall be convicted under this section who shall have set, in good faith and with reasonable care, a back fire for the purpose of stopping the progress of a fire then actually burning.

2. Allowing fires to escape from the control of the persons having charge thereof, or to spread to the lands of any person other than the builder of such fire without using every reasonable and proper precaution to prevent such fire from escaping.

3. Burning brush, stumps, logs, rubbish, fallen timber, fallows, grass or stubble, or blasting with dynamite, powder or other explosives, or setting off fireworks, whether on his own land or that of another, without taking every proper and reasonable precaution both before the lighting of said fire and at all times thereafter to prevent the escape thereof; provided, that any fire warden may, at his discretion, give a written permit to any person desiring to burn or blast as aforesaid; such permit shall contain such rules and regulations for the building and management of

such fires as the State board of forestry may from time to time prescribe; and in any prosecution under this subsection, it shall be prima facie evidence that the defendant has taken proper and reasonable precautions to prevent the escape of such fire, when he shall show that he has received such a permit and has complied with all the rules and regulations therein prescribed.

4. Using any logging locomotive, donkey or threshing engine or any other engine or boiler, in or near any forest, brush, grass, grain or stubble land, unless he shall prove upon the trial, affirmatively, that such engines or boilers used by him were provided with adequate devices to prevent the escape of fire or sparks from smokestacks, ash pans, fire boxes, or other parts, and that he has used every reasonable precaution to prevent the causing of fire thereby.

4a. Harvesting grain or causing grain to be harvested by means of a combined harvester, header, or stationary threshing machine, or bailing hay by means of a hay press, unless he shall keep at all times in convenient places upon each said combined harvester, header, or stationary threshing machine, or hay press, fully equipped and ready for immediate use, two suitable chemical fire extinguishers, approved by the Underwriters' laboratories, each of the capacity of not less than two and one-half gallons.

4b. Operating or causing to be operated any gas tractor, oil-burning engine, gas-propelled harvesting machine or auto truck in harvesting or moving grain or hay, or moving said tractor, engine, machine or auto truck in or near any grain or grass lands, unless he shall maintain attached to the exhaust on said gas tractor, oil-burning engine or gas-propelled harvesting machine, an effective spark-arresting and burning carbon-arresting device.

5. Refusing or failing to render assistance in combating fires at the summons of any fire warden unless prevented by good and sufficient reasons.

6. Leaving a camp fire burning or unextinguished without some person in attendance, or allowing such fire to spread after being built.

7. The provisions of this section shall not apply to the setting of fire on lands within any municipal corporation of the State.

The State law thus defines the following offenses:

1. (a) Setting fire to any forest, etc., growing on lands not his own without permission of the owner of such land.

(b) Causing fire to be set to any forest, etc., on lands not his own without permission of the owner.

(c) No person shall be convicted of offenses "a" or "b" who shall have set a back fire in good faith to check a fire already burning.

2. (a) Allowing fires to escape from control to the lands of another person without using every reasonable precaution to prevent such escape.

(b) Allowing fires to spread to the lands of another person.

3. (a) Burning brush, etc., on his own land without taking every reasonable precaution to prevent the escape of fire.

(b) Blasting with dynamite, etc., in forest or brush-covered land, either his own or the property of another, without taking every reasonable precaution to prevent the escape of fire.

(c) Burning permit and compliance with the regulations contained therein shall be prima facie evidence of reasonable and proper precaution to prevent the escape of the fire.

4. (a) Subsection 4 puts the burden of proof on any person using any engine or boiler in or near any forest, brush or grass land to show that such engine or boiler was provided with adequate devices to prevent the escape of fire or sparks, and that he has used every reasonable precaution to prevent the causing of fires thereby.

(b) (Subsection 4a) The use of grain harvesters, headers or thrashing machines, or hay presses, unless they are equipped with approved fire extinguishers.

(c) (Subsection 4b) The operation of gas-propelled tractors, harvesting machines, or auto trucks, or other oil-burning engines, without effective spark and burning carbon arresting equipment.

(d) The moving of any such machines or engines in or near any grass or grain land without such equipment.

5. (a) Refusing or failing to render assistance in combating fires at the summons of a fire warden unless prevented by good and sufficient reasons.

6. (a) Leaving a fire unextinguished on departing from camp.

(b) Allowing a camp fire to spread after building.

STATE LAW INTERPRETATIONS, ETC.

Under current judicial interpretations and the attitude of juries, it has been impossible, despite the apparent wording of the law, to convict a man for setting a fire on his own land, if it does not spread to other land, whether he has taken any precautions to prevent such spread or not.

Nor, for the same reasons, has any one been prosecuted successfully for failure to prevent the spread from his own land to that of another, of fire for whose origin he is not himself responsible. However, it is believed that a civil

damage suit can in such cases be maintained and a test case will be made of the first one in which the damage warrants and the trespasser has sufficient assets to satisfy a judgment, if obtained.

It will also be observed that (except under voluntary agreements, such as our National Forest cooperative fire associations) a man can not in this State be required to obtain a permit for setting fire on his own land, a former California law to this effect having been declared unconstitutional. The possession of such a permit and compliance with its terms, according to the law, constitutes only a protection to burners on their own land, of which they may avail themselves against criminal prosecution for the possible escape of fire to the land of another.

Forest officers have no jurisdiction over fires wholly on Indian reservations. But Indians setting fires or causing fires to be set, whether on reservations or not, which fires spread to National Forest lands, are subject to the above laws in respect to those offenses. If it is desired to arrest an Indian on a reservation for such a fire, this should be done through the Indian Agent.

It is doubtful if there is statute authority by which an officer can commandeer property, such as an automobile, along with the personal assistance required by the State fire law, either in pursuing a criminal or in fighting fire. Such action, which is common by city police, may get by; but it probably could be called, if the citizen knew his rights.

CIVIL LAWS.

The civil laws are too voluminous for reproduction here, and their application is too complex to be attempted by a layman. It is of sufficient importance for note here, however, that chapter 264, California Laws of 1905, as revised in 1919, gives to the United States the right, heretofore limited to the State and counties, of recovery in a civil action of double the damages sustained from man-caused fires, if the fires occurred through willfulness, malice, or negligence, as well as the actual damage if the fires occurred or escaped accidentally or unavoidably, and the full cost incurred in fighting any such fires.

In order that we may be able to hold for costs or damages, in a civil action, an owner of land on which a fire is burning, in event of the escape or spread of the fire to National Forest land, the following things must be observed at the time of the fire:

1. The owner must be notified of the existence of fire on his land, together with its size and degree of danger, and the nature and probable cost of the measures required to combat it.

2. This notification must be in time to give him reasonable opportunity to take the required action before it spreads to National Forest land.

3. If he then takes measures which are not adequate, we must be able to prove, both that they were in fact inadequate, and that he was informed what measures would be adequate and necessary.

4. No action must be taken by the Forest Service to fight such a fire, before it has spread to National Forest land, until the owner has commenced action on it, or has had a reasonable time in which to do so.

It should be noted that the above has no reference to criminal prosecutions.

DECIDING ON THE PROPER COURSE OF ACTION.

In respect to trespasses there are, in general, the following possible actions:

A. Legal.
   1. Criminal.
      a. State.
      b. Federal.
   2. Civil (costs, damages, injunctions, etc.); always Federal, so far as concerns National Forests.

B. Administrative: Revoking of permits or refusal of new ones, cancellation of priorities or reduction of numbers (in grazing permits), etc.

In cases of willful fires, criminal action is mandatory, whenever evidence can be secured sufficient to sustain it, and is usually so in the case of negligent fires originating on the National Forests. And the effort to secure such evidence is equally mandatory. Criminal action may also be desirable in many other cases.

Whenever substantial damage has resulted to the National Forest, however, the desirability of instituting civil suit must be considered; and if the trespasser is a Forest user, whether administrative action shall be taken. In some cases civil or administrative action may be in addition to criminal action; in others an alternative to the latter. Damage suits are only of value when the trespasser has sufficient assets to satisfy a judgment, if obtained. Decision in respect to civil or administrative action lies with the supervisor or district forester.

The trespass investigator must bear these facts in mind and make report on Form 856 to the supervisor immediately, or as soon as necessary data can be obtained, in all cases where civil or administrative action may be a possibility, in accordance with the National Forest Trespass Manual.

In all cases involving criminal responsibility, however, he must protect his own work by proceeding with his investigation, pending further instructions, as energetically as if no other action were possible.

Criminal action.—Actions brought under Federal statutes, or regulations of the Department of Agriculture, must be brought in Federal courts, and those under State statutes in State courts.

For example, the offenses of allowing fires to escape from the control of the person having charge, or of allowing fires to spread to the lands of another person without using every reasonable and proper precaution to prevent such escape, should be taken up under the State law, since the Federal law and regulations do not include them.

This restriction would not be true, however, if the fire was willfully set with the purpose of communicating it to other land. When it can be proved that fires set on a National Forest were prearranged by two or more persons, prosecution is also possible in the Federal courts on the felony charge of conspiracy, under section 37 of 35 Stat., 1096, cited above. A few convictions for felony would go a long way to stop the "hobnobbing" and incendiary talk of malcontents, which undoubtedly are directly responsible for many fires other than those directly due

to the leaders. Conspiracy, however, is an exceedingly difficult thing to prove.

When an offense is covered by both State law and Federal law or regulation, choice of court may depend either upon which law covers the case best, in view of local circumstances, or the nature of the evidence available, or upon the speed which may be expected in the respective courts, together with the attitude of the officials who would have to be concerned or of public sentiment in the local communities where minor courts would sit and from which juries would be drawn. Especially when a suspect can be brought to plead guilty, the justice's court is usually the quickest and best resort.

Justice's courts have jurisdiction only over crimes punishable by fine of not over $500, or imprisonment of not over six months. This, however, covers the maximum penalties provided by section 384 of the State penal code.

A crime commenced in one county and finished in another can be prosecuted in either county.

It should also be borne in mind that acquittal in a justice's court constitutes no legal bar to a prosecution in a Federal court for the same offense, provided the case is one of which the Federal court can take appropriate cognizance.

Rewards are offered by Department of Agriculture Regulation (See N. F. Manual, Regs. T–2 and T–7), in fire and property trespass cases, subject to the authorization of Congress, which at the date of preparation of this manual, has been withdrawn, and they can not be offered until this is again restored. No rewards have so far been offered by the State of California, and none can therefore be had as a result of State court cases.

As a summary, then, the State law is limited to misdemeanors, but is usually speedier in action than the Federal; it is necessarily used in cases covered only by it, and is preferable for the less important cases covered by both State and Federal laws, when a plea of guilty can be secured, and in jury actions if official cooperation and favorable community sentiment are reasonably assured. The Federal law is preferable in flagrant cases and where it is desirable to get a case away from adverse local preju-

dice in order to obtain trial on its merits; and is necessary for violations of Federal laws or regulations not covered by the State law, in damage and conspiracy cases, and when it is desired to offer reward. (But see above on reward.) A Federal prosecution is much more effective as a future deterrent in aggravated cases, both because of greater penalties in case of conviction, and because the defendant will more probably feel that he "loses even if he wins," on account of the heavy expense incurred by a Federal case.

Action in Federal cases must be under the direction of the district assistant to the solicitor, and should have his counsel on all legal difficulties in State cases. All but the clearest justice's court cases will require report on Form 856, as provided by the National Forest Manual, by the ranger or other investigator for decision as to action.

Civil action.—Civil actions brought by the United States must be in a Federal court, under the direction of the district assistant to the solicitor. When civil action may possibly be in addition to criminal action, the report on Form 856 must be specially explicit with respect to the evidence available for criminal action, since criminal action instituted in advance of a civil action for the same offense and resulting in failure is almost certain to kill the chance of success of the civil suit.

In addition to data on damage to the United States, the Form 856 report should also give information on the probable possession by the trespasser of assets sufficient to meet a civil judgment, as well as the probable effect of the damage suit in question upon the sentiment of the community, which are often points requiring consideration in connection with such suits.

Administrative action.—Whenever a person responsible for a fire is a Forest user, and especially if his guilt is convincingly established in the mind of the investigator, but the nature of the case or of the evidence available are such as to make successful criminal prosecution doubtful, the report on Form 856 should present specific recommendations, fully explained, with respect to appropriate administrative action. A similar report should also be made

with respect to users who, though not directly responsible for fires, fail to use proper effort to extinguish them in accordance with the terms of their permits, who refuse to fight fire or to give information, or otherwise legitimately aid the prosecution of those responsible for trespasses, or who talk against fire or game protection.

FISH AND GAME.

LAWS.

The fish and game laws are too voluminous for reproduction here. Every Forest officer must have as a part of his law enforcement equipment a copy of the latest edition of the Fish and Game Laws of the State of California (or Nevada). The fish and game laws of California, as published in pocket pamphlet form by the State Fish and Game Commission, contain also the Federal laws and regulations relating to migratory birds. Copies can be obtained on request either to the district forester or the above commission, San Francisco.

REGULATIONS.

In addition to the preceding, Department of Agriculture Regulation T–7a provides as follows:

Reg. T-7a.—The going or being upon any land of the United States, or in or on the waters thereof, within a National Forest, with intent to hunt, catch, trap, willfully disturb or kill any kind of game animal, game or nongame bird, or fish, or to take the eggs of any such bird, in violation of the laws of the State in which such land or waters are situated, is hereby prohibited.

This regulation brings violations of the State fish and game laws into the jurisdiction of the Federal courts, when it is desirable to invoke their action. An important point is that this regulation permits prosecution for intent.

COURSE TO PURSUE.

Legal action.—In fish and game violations legal action will be criminal only. Whenever this can be done in cooperation with the State fish and game commission or their wardens, effectively and without excess cost in time and

money to the Service, it should be so done. Their cooperation will often divide the time and cost of the necessary work.

In some cases, however, their men may not be located so that they can promptly undertake specific investigations or prosecutions. Game refuges also present aspects which may require independent action, since it has been ruled by the courts that these refuges must be properly posted and patrolled before action against offenders upon them is possible in the State courts. Action in such cases may be taken, under Department Regulation T–7a, in the Federal court, provided the offender can be caught on Government land, and that fact proved to the court.

Administrative action.—The relation of administrative action to fish and game cases will be collateral, as in fire cases.

GRAZING.

REGULATIONS.

Grazing trespass is almost wholly governed by Forest Service Regulation (T–4) and terms of permit. For convenience the following is reprinted from the National Forest Trespass Manual:

The following acts constitute trespass:

(A) Allowing stock not exempt from permit to drift and graze on a National Forest without permit.

(B) Grazing or driving stock not exempt from permit on National Forest land without permit.

(C) Violation of any of the terms of a grazing or crossing permit.

(D) Refusal to remove stock upon instructions from an authorized Forest officer when an injury is being done to the National Forest by reason of improper handling of the stock.

COURSE OF ACTION.

Legal action in grazing cases, whether criminal or civil, falls in the Federal court. Questions of civil or administrative action are especially important in grazing trespass, and the supervisor must be kept in correspondingly close touch with all developments, especially by Form 856 report.

The first distinction lies between permitted and nonpermitted stock.

In the case of unpermitted stock, legal action is the only recourse. If material damage has resulted to the National Forest, a civil suit should be brought against the owner. Criminal action can also be instituted if the gravity of the case warrants. If the damage is slight, criminal action only should be resorted to. When for any reason neither civil nor criminal action against an owner of trespassing unpermitted stock seems feasible and settlement of damages can not be obtained, such settlement should be required as a condition of favorable action if the trespasser applies for a permit in the future. When any grazing trespass involves negligence or knowing participation on the part of the herder or other person in charge of the stock, criminal action should be brought against him, either with or without actions against the owner.

In the case of permitted stock, both legal and administrative action are possible. Double penalty should seldom be invoked, however, and revocation of permit is usually a greater penalty than any possible damages or fine. The gravity of the offense and the effect of possible actions upon the permittee should always be considered, however. Only in aggravated cases should he be put out of business by revocation of permit; in lesser cases where disciplinary measures appear preferable to legal action, reduction or some less severe administrative action than revocation should be chosen. Damage suits should only be brought when the damage is commensurate with the cost of the action, and when the trespasser has sufficient assets so that damages can be recovered. A man's permit can be revoked for conviction of cattle theft, but not for rumors of it. In the latter case, however, we are justified in investigating the rumor and laying the results before the proper authorities. Criminal prosecution should be used more than in the past, especially with respect to herders, provided we do not lay ourselves open to a just charge of prosecuting subordinates only, when their principals are cognizant of or responsible for the trespass.

Suits can not be brought by the Forest Service for trespass on private land waived under Regulation G–7, the courts having held that waiver does not release such land from the jurisdiction of the State law. This is often an

obstacle to effective grazing enforcement. If the permittee is willful or negligent as to trespass, however, he can often be caught by lying low until his stock are found on Government land.

With respect to trespass on mineral return (R. R.) land, the possibility of damage suit is doubtful, although not so clearly excluded as on waived land.

TIMBER.

On timber trespass, covered by Regulation T 3, see under "Duties," page 4.

OCCUPANCY.

REGULATIONS.

In occupancy trespass, as covered by Regulation T-5, the provision under which law enforcement investigation will most often figure is probably the last clause, requiring occupancy, structures, etc., on claims to be "for the actual use, improvement, and development of the claim, consistent with the purposes for which it was initiated." This provision should cause a careful scrutiny of wildcat mining claims and others, which are still in some localities being used as a cover for the enjoyment of uses or benefits not consistent with the purposes for which the claims were initiated.

COURSE OF ACTION.

Action in occupancy trespass will be mainly legal, and this almost entirely civil. This will require uniform reference of cases to supervisor and district forester for decision on action to be taken. Civil action may be for injunction, ejectment, cancellation of easements, or other rights not legitimately used, or for quieting of title, etc. Legal action will lie in Federal courts only.

Administrative action would only figure collaterally, as in fire cases, but should not be overlooked when the trespasser holds any Forest permit.

PROPERTY.

LAWS AND REGULATIONS.

Property trespass, as provided for by Regulation T–6, covers only defacement, damage or destruction, etc., to Government property, including notices and signs, or going or being upon National Forest land with intent to commit the same. Property offenses which may require law enforcement investigation and prosecution, may include robbery or theft, under the Criminal Code, act of March 4, 1919, sections 46 or 47 (35 Stat., 1097), which provide as follows:

SEC. 46. Whoever shall rob another of any kind or description of personal property belonging to the United States, or shall feloniously take and carry away the same, shall be fined not more than five thousand dollars, or imprisoned not more than ten years, or both.

SEC. 47. Whoever shall embezzle, steal or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records or property of the United States, shall be fined not more than five thousand dollars, or imprisoned not more than five years, or both.

Section 48 of the same statute also provides similar penalties to those of section 47, for knowingly receiving, concealing, etc., Government property, stolen as in section 47.

Legal actions in property offenses will be in Federal court, and will in most cases be criminal. Civil action, for the recovery either of damages, or the property itself (replevin), is not precluded, and may be either in addition to criminal prosecution or as an alternative to the latter. But the expediency of damage suits is questionable here more often than in most other trespasses, on account of improbable possession by the trespasser of assets sufficient to be levied upon.

INVESTIGATION.

GENERAL METHODS.

Qualifications.—The greater a man's ability the more he can accomplish, in this as in any other work. Qualifications peculiarly necessary for an investigator are observa-

tion, common sense, work. Nothing is so small as to be safely overlooked; a whole case may turn on what seems a most unimportant detail. On the other hand many details are unimportant. The correct judging of importance hinges largely upon the imaginative power to picture constantly in the mind the whole case and its probable development; beware of letting anything go as unimportant without thus carefully weighing it.

Catching a criminal is a battle of wits; the side which thinks hardest all the time wins. No stone can be left unturned, no reasonable theory left untried. Success in difficult cases requires special aptitude, as well as experience. But only with hard work and hard thinking, concentration of every energy on the one issue in hand, and wholehearted devotion, will anyone carry this work to success in spite of discouragements, apparently unsolvable problems, and unfavorable jury decisions when it has seemed that the case couldn't go wrong. And all of us can give these.

Preliminary information.—The best success demands thorough preparation. This includes not only a knowledge of the laws and procedure under which we work, but the details of all lawless regions, such as topography, trails and other get-away avenues; of the persons existing in every community who know all about the rest of the community, and the cultivation of their goodwill so that you may turn to them for information when necessary; of the habits, rendevous and associates of general community suspects and of their family, business and other relationships, so that in seeking information from others you may not unwittingly kill your own game by approaching one of their close sympathizers; and even of the interior arrangements of their houses and residence premises, such as the location of stairways, bedrooms, closets and storerooms, against the possible necessity of serving search warrants there. Such information with respect to residence premises can often be obtained by using the opportunity of plausible business pretexts to call on them.

Starting out.—Investigative work, especially in fire cases, demands even greater speed in get-away than suppression. If footprints lie for days, or even until after the

suppression crew has tramped over the ground, before they are investigated, not only may they be obliterated by others, but the defense will not be slow to take advantage, in a court trial, of the possibility that tracks proved to be those of the defendant could have been made after the offense was committed. The latter danger applies to other trespasses as well as fire. Our only safety lies in starting investigation on the ground with all possible speed.

How many men.—Never rush in a mob. Unless something is wrong with the protection organization, even fire suppression should not require sending many men at first. For investigative purposes two is best, since it provides for witness and assistance, while reducing the chance of confusion and obliteration of clues. The matter of assistance is specially important in case of arrest, to give the investigator someone with whom safely to leave the arrested person and thus keep him from his friends, if it should be necessary for the investigator to go elsewhere or to attend to something else.

Equipment.—To get away quickly the investigator must have his equipment packed and ready beforehand. A notebook is one of the most necessary items. Everything must be written down; no detail is too small. This becomes especially important when the case must be taken up later by a special investigator who has not participated in the initial hunt for clues. Each searcher for clues should also have a map. A United States Geological Survey quadrangle, or a Forest recreation map, if accurate, is the most convenient base map on which to keep the general lay-out. (For other items of equipment, see Appendix A.)

What to do.—The first man or men at a fire must either take up the hunt for clues or insure that these will not be destroyed until the investigator can get there; must keep their eyes open for them in either case. They should see that fire fighters are kept from crowding around the fire until the ground has been looked over for evidence; must make all fire fighters stop horses and keep off the trails themselves, for at least 100 yards from the origin of the fire.

Require men in charge of fire fighting to keep eyes open for clues, note people met on trails, with time of meeting, especially outsiders first on the scene of the fire, who may be the setters, with an irresistible desire to see it burn; to keep ears open for boastful or antagonistic remarks of fire fighters, who may themselves have set the fire or know of those who did; and to report anything learned at once to the district ranger or other investigator.

SEARCHING FOR CLUES.

What are clues?—Absolutely no deed is done without leaving clues; the only question is our ability to find them. A no-clue case means only that we are not up to the scratch in finding them.

Anything is a clue which has any connection with the offense or its author. Tracks, camp fire, or lunch remains, "plant" used to set off a fire, blanket or other threads pulled off by brush or trees, hairs, scraps of paper or other things carelessly or unintentionally left by the offender, etc., are examples. A good working rule is that everything is to be held as a clue which can not be accounted for without reference to the offense.

But nothing is really a clue without the interpretation which can connect it with the deed. Some things, such as tracks, the Forest officer can interpret better than any outside expert—in other words, we are ourselves the best experts. Other things can only be interpreted by those with special training, as for example, the microscopist, the chemist, or other specialists. No smallest thing is unimportant until it is certain that it has no useful connection with the case.

The working theory.—To guide the investigator in the interpretation of clues or evidence, two things are necessary: (1) Every bit of knowledge he can gather, before leaving for the scene or on the way, as to the offense, including its occurrence, surrounding circumstances, and probable author and motive; (2) the building of a mental picture or reconstruction of all that one knows of the case. This must be constantly building and constantly revised. Nothing else will prevent wandering, loss of time, and possible failure. At the start it may consist only of a

"hunch" as to who set the fire or where to look for clues; but every new thing found will contribute to it. This mental reconstruction, or theory of the case, is the indispensable bridge by which we cross from things already known to those still to be found out.

How to search.—After arriving on the scene, first locate the critical point; for example, the origin of a fire. If the point of origin is not evident, beware of jumping to conclusions; the incendiary, or other criminal, does not do the obvious thing, if he has any sense. Then examine minutely the immediate area. Definite system is absolutely necessary in this search. Go systematically around the circle, widening the circles each time; but keep them close enough together (say 3 feet apart at first) to make sure that every foot of ground is minutely examined. Drop markers to show where each circle ends.

Notebook record.—Record must be kept of everything found and done, and of all conversations held or information learned. Court proof can depend on nothing less than definite written record. Describe everything found, first as is, then as moved by the offender, and record them in the same definite order in which they are found. The time of every occurrence or find, and of every notebook entry, should be recorded. Also be sure to get from suppression foreman, or other sources, the exact time fire was started, discovered, fighting commenced, etc., time persons were met on trails, and all other significant circumstances. The time record is essential. But it will be sure to fall down unless all concerned religiously cultivate a look-at-the-watch habit.

The notebook record must contain everything. It must also be in orderly enough form to be made rapid use of. For both these reasons it must be made as you go. This takes time; but end-of-day writing up will not work, and will not be tolerated, on this job. For specific points of importance in the notebook record, see index under "Record, notebook."

Map record.—An accurate map is the best means of showing many of the facts of trespass, for the trespass report or in court, and is necessary in every case. The field draft

of this map can be prepared on the ordinary map forms. (On the preparation of such maps, see also p. 70.)

Look over your map when made, to be sure it is complete. Especially in maps of a man's trail, as well as of streams, be sure to indicate direction of travel by arrows.

Handling evidence material.—Do not touch any objects found which will figure as clues or evidence until they have been accurately described, and if possible, photographed, in place. Then pick them up and see if there is anything further to be described which was not evident in place. But pick up nothing which might have been handled by the offender, except by the edges or corners. This is imperative because of possible fingerprint evidence, which your own finger prints would obliterate. A good suggestion is to handle such material only with gloves kept carefully cleaned by gasoline. With respect to photographs, remember that any photographs involving scenery, to pass as evidence, must be taken from the level of the eyes (not stomach-high, as a camera is ordinarily held) and must show on reverse that fact, together with the direction in which taken, angle of view included, etc.

When anything is found, think at once, What will be necessary to establish the identity and authenticity of this if needed as evidence in court? Collateral supporting or corroborating evidence may be necessary; a witness to its finding is also invaluable. Now is the time, by getting everything thus required, to save the annoyance of a second trip. In any case, the finder must put on all objects found a private mark, in a hidden or inconspicuous place, by which he can himself identify it in court as the identical object found. This, together with the notebook record of the circumstances of finding, in their chronological order, in a *bound* notebook,[3] is the best safeguard against an intimation by a shrewd defense attorney, to the possibly serious prejudice of a jury, that evidence has been "planted" by the prosecution.

All objects which it may be desired to use as evidence should be guarded with the utmost care, to avoid possi-

[3] A looseleaf notebook is much weaker as court evidence, since it is open to the possibility of a given page having been inserted afterwards.

bility of loss, or their purloining by the defendant or his sympathizers. The district ranger, or special investigator in charge, should take personal charge of all such articles, unless it be convenient to turn them over to the custody of a United States marshal or a sheriff. In the latter case, the Forest officer so turning them over must, of course, take a receipt, and so note them in his notebook record that they will not be overlooked in working up his material for the case. This care in having such objects under continuous and responsible custody is also a safeguard against suspicion of "planting."

THE PLAN OF CAMPAIGN.

The case which we build up must be,

(1) True.

(2) Complete.

(3) Proved by evidence which will stand in court and convince a jury.

(1) *The true case.*—We start with a few facts and a tentative theory based upon them and our best surmises. Whenever new clues or facts are found, ask yourself (a) What instructions, if any, are there in respect to a situation like this? (b) What does this act mean? (c) On the basis of facts to date, if I were the criminal, what would I do next? Sit down and smoke a pipe over it, if that will help. There is no time to be wasted, but right interpretation of facts, and right action respecting them, are so essential that the time necessary to insure these will yield bigger dividends than half-baked haste. Moreover, most of us find general instructions so difficult to apply to concrete cases, that it requires specific and conscious effort; but to do it is a constant necessity until familiarity with the instructions becomes second nature. Most of the past failures in law enforcement have been on points directly covered by unheeded instructions. No instructions are beyond improvement; but every investigator will be held responsible for following them, unless other action is proved better by actual results.

With respect to the working theory, the simplest one which will explain the facts is always preferable; but the theory is never complete until the case is closed. At all

times, but especially at first, when the theory is based on few facts, it must be lightly held, subject to modification at any time by what shall be discovered next, regardless of whether the new evidence agrees with the previous theory or not.

Such open-mindedness, viewing every new fact on its own merits, is harder to maintain than many people suppose, and requires constant and definite effort. It is extraordinarily easy to overvalue new facts which coincide with one's theory already built, and to undervalue those which do not. But nothing is more fatal to success, or more common among inexperienced investigators, than such a preconceived theory which its holder will not change when evidence contrary to it appears, but will instead discredit the evidence, regardless of its weight. Therefore it is necessary systematically to review one's theory in the light of all facts to date, every little while. Especially beware of believing that any given man could not have set the fire—believe your evidence; in investigation, we must reverse the legal rule and believe anybody guilty until he is proved innocent. Beware of thinking the criminal could not have made so big a blunder, when such apparently develops—he usually does blunder somewhere, otherwise he would never be caught.

This does not mean that every apparent fact should not be searchingly examined and made to justify itself, but only that it must not be discarded without weighing such proof, because of a theory previously to the contrary. Our theory of the case, then, must be constantly building as new facts are found.

In building a sound theory there are four steps:

(a) Clear definition of the problem. This may not be what it first appears; be sure you know what the difficulty is.

(b) Cast about for possible solutions—not only the first one which occurs to you, but as many as you can figure out; then compare their merits and select the most probable one.

(c) Reason out the developments of this idea to its conclusion: pushed to this conclusion it may not hold water, when this fact is not apparent without it.

(d) Constantly test your theory—by searching for further evidence, or by experiment. Keep your eyes open for, and give honest weight to, evidence indicating some other theory as more probable.

(2) *The complete case.*—To be complete, the case must answer the following questions: (a) What was the offense? (b) where was it committed? (c) when was it done? (d) how was it accomplished? (e) who did it? (f) why did he do it?

Memorize these six words, *what*, *where*, *when*, *how*, *who*, *why*, and frequently test by them the completeness of both your theory and the facts so far actually established. This will be one of the greatest helps in planning what remains to be done.

(3) *The case which will stand in court.*—Proof which will convince a jury "beyond a reasonable doubt," which is necessary for a criminal verdict, is much more difficult to establish than a case which will convince ourselves. Individual judgments take much knowledge for granted, but a court must, generally speaking, have actual proof of every material point. If you hear a shot, for example, and on going toward it find a man standing over a dead doe, you won't be long in reaching a conclusion. But if you arrest him while he is only looking at it, you are liable to lose your case in court. You might possibly be able to find someone who saw him shoot and the doe fall. But if you lie low until he puts his hand on it to take possession, you have got him on that count, whether you can prove that he killed it or not. Whenever a fact is found which points to a material conclusion, ask yourself, (a) Does this sufficiently prove the conclusion? (b) What else, if anything, will be necessary to establish or corroborate it in court?

A jury will only be convinced by a *complete* chain of circumstantial evidence, both as to facts and the proof that they are facts. Constantly review this chain while following clues, to be sure no link is omitted. Also bear in mind that any one chain may be broken somewhere by the defense; therefore build all the lines of evidence possible to your conclusion.

SPECIAL CLUES.

Tracks.—Tracks are among our most important clues. If a fire was set, or other offense committed, by human agency, a man walked or rode there to do it. He may sidestep or cover up tracks in the immediate vicinity of the offense, or they may be burned over, or obliterated by others. Further out he will settle down to normal gait. If no tracks are found at or near the origin, widen out. Begin this wider search at the most likely points; but until the tracks are found conduct the search on a rigid system, so that no area will be overlooked. If it is possible to get wind of the present whereabouts of the suspect, the investigator should of course cut away and get him, leaving assistants to connect up the complete trail for use as evidence, or postponing this until the suspect is disposed of. For the man who has gone in pursuit of the suspect it saves time and is usually just as effective to take up the completing of the trail backward, from the point where the suspect is taken, to the point where it was previously left.

Identification of tracks.—Study of details is essential; dimensions and shape of imprint, nails (present and missing), seams, creases, cracks, or other distinctive marks; wear, repairs; age of track, methods of putting down the foot (twist as foot strikes the ground, etc.), angle of feet (toes out, straight ahead or in) and differences between the feet in this angle, if any; barefoot, smooth or rough shod horse tracks, specially shaped or weighted shoes, and gait of animal (as trot or pace).

Age of track.—This is shown by sharpness of impression, by moisture and color, whether leaves and dirt lumps have fallen into it, or tracks of insects, birds, etc., or other man-caused tracks have crossed it; and by the condition of broken green twigs, etc. One of the best indications is the condition of manure dropped by an animal. A trail made at night is often known by the way it bumps into or makes detours around obstacles. Whether a horse was ridden or led may be shown by whether the trail passes under or around low-hanging limbs.

Other indications.—Speed may be approximately shown by degree of slide at heel, depth of heel edge and toe edge, length of drag at toe, and distance between tracks. The class of person or animal can sometimes be deduced from tracks (high-heeled vaquero boots, new or pointed-toe city man's shoes, horse shoes vs. mule shoes, etc.); also whether drunk or sober; carrying burden or free (feet wider apart, steps shorter and more unsteady with burden); and existence of bodily defects (step is shorter on lame leg; injured knee or hip twists foot tracks, etc.). A confidential talk with the local shoemaker or blacksmith, if there is one, will often give light on the ownership of shoes which make a peculiar track.

Following tracks.—This requires experience and skill. Points sometimes overlooked are the following: In dry pine needles, breakage or minute differences in color are often discernible on hands and knees, though the needles have sprung back to position and no trace is visible while standing. Tracks in dry grass also require extremely close attention; barring wind, grass will usually hold what impression is made until the coming of night dew, fog, or rain. Through brush a trail can be followed by broken or skinned twigs near the ground when it is invisible on the ground itself. When the trail is broken or lost, circle ahead in the probable direction of the trail; stakes set by tracks found will help line up the course.

Comparing tracks.—To convince a jury we must absolutely identify tracks found with known tracks of the suspect. A track may be compared with a foot or shoe for identifying marks, but in respect to dimensions it is better to compare tracks, and also moving tracks with moving tracks, since tracks made in soft earth, especially at high speed, are always shorter than the foot making them, due to push toward center at heel and toe.

Getting check tracks for comparison is often ticklish business. An innocent man should not object to letting his track be measured; but he may take offense at the suspicion. Tact should be exercised not to antagonize innocent persons; but no one can be assumed to be innocent. If the evidence points to guilt, the tracks must be obtained. This is sometimes possible by indirection. In the case of

human tracks get the suspect to come outside on some pretext, and lead him across ground where he will leave a good track, which can be measured afterwards. Horses similarly; or, if the owner objects, use a search warrant (which see).

Auto tracks.—How to tell the travel direction of autos puzzles many investigators. On earth roads the following are indicators: pattern imprint of nonskid tires, which is steeper and more distinct on the rear side of each indentation; stones which are shoved ahead by wheels, the track of the stone usually being intact close behind where it stops, and dust being piled by the shove on the forward side; imprint of partly embedded stones slightly displaced by the wheels, the displacement being backward in very small stones and forward (or both forward and then backward) in those large enough to receive lateral as well as downward pressure; a sprinkling of sand or dust, which is found on the rear side of stones or other obstructions passed over by the wheel, while the forward side is usually swept clean; direction of skid on side slopes or against angling rocks or water breaks; the jump (when speed is sufficient) off the forward side of such obstructions, or in dropping into chuck holes; impact (wider tire imprint) on the forward side of chuck holes or against obstructions; action in ruts, where, in dropping in, a wheel will run off the high side to a feather edge, while in climbing out it will stay in the rut until side pressure forces it to climb out abruptly; the direction in which water drops or mud are carried out of a mud hole or a stream ford; traction slips, which occur in going up steep grades; the turn on curves, which is usually more abrupt on leaving than on entering a curve; the deeper impression due to standing, at stops in soft soil, the impression being more pronounced at its rear side; the "Y" where a machine backs out from a roadside stop. Even if no one sign is conclusive, the sum of those gathered by following the track closely for some distance will in most cases lead to a sure conclusion. Don't give up too soon.

Excessive speed will almost always be disclosed by wind swirl disturbances of the track, the distance of side throw

of sand, mud or water, side lurch on rough road, and the length of wheel jump in passing over obstacles. The size of car is approximately indicated by the width of tire tread, although this is affected by the amount of load, as well as by the air pressure in the tires. When the load is heavy, there is a higher piling up of the dust ridge which is left in the center of the wheel track by the suction and thrust of traction on pneumatic tires.

Tracking autos is rendered easier if, where campers are registered on the forests, the auto numbers are taken.

Proficiency in tracking.—Whether of autos or men or animals, this proficiency can only be gained by actual practice, and plenty of it. But while trackers can not be made from books, one tracker can often tell another new kinks, and we can all learn more by study of our work. Let every man keep his eyes open, and send in new things of which he learns, or clues familiar to him but not mentioned here, for the benefit of all.

Moreover, many who know can not tell how they know, and the discussion of these instructions will help us in the latter. The importance of this must not be overlooked; in court we will surely be asked this question, and the opposing attorney will discredit our testimony if we can't tell. "You must not only know that you know, but also know *how* you know."

Record of tracks.—The original track, or a cast or replica of it, is the most convincing evidence in respect to it.

The original footprint can often be solidified sufficiently to be dug out and preserved, by means of water glass. This is especially useful in sand, or sandy soils. If the soil containing the print is firm enough not to be displaced by it, the water glass can be poured directly into the print. If not, dig a shallow trench, a couple of inches wide and deep, around the print and a couple of inches distant from it, and flow the water glass into the trench, until it has been soaked up by the soil so that it shows on the surface of the print. Then let it stand for a day. The print can not be pried out, but must be carefully freed by digging the soil away from around and under it. It must also be handled with much care thereafter, and this reduces

the value of the method when conditions, such as transportation, are not favorable to the required care.

In this and many other cases a more desirable method is to make a cast of the track with plaster of paris, or neat Portland cement. Plaster of paris sets more quickly. The builder's finish plaster grade is good enough. Cement is often more available to a Forest officer. From the cast a replica of the track can then be made, or not, as desired.

When the soil composing the print is firm enough, the plaster or cement can be wet-mixed by stirring carefully into water (sifting it in, preferably, to avoid lumps) to the consistency of thick cream, and flowed directly into the impression, either by pouring, or, if greater care is desirable, from a spoon. Pure plaster of paris sets in about 5 minutes, and therefore requires rapid work; its setting can be retarded, however, if desired, by adding a little vinegar. When about one-half inch depth has been flowed in, reinforce the cast by laying in it, crossed at right angles, several thin water-soaked strips of wood. In the absence of these, small green twigs, or even stout string, will help. After adding another one-half inch of plaster the cast can again be reinforced, if desired. This is hardly necessary with cement. The finished cast should be at least 1 inch thick. If this is greater than the depth of the track a wooden box or earthen dam can be built around the track to hold the liquid in.

In dry sand, ashes, or dust a cast can usually be secured by sifting in very carefully dry plaster of paris, or cement, preferably with a flour sifter held close above the print, then sprinkling water slowly onto the dry plaster or cement (for example by wringing out a cloth over it) until it has become moistened thoroughly, using care not to allow water to run over onto the exposed dust, etc., surrounding it. When a one-fourth inch layer of cast has thus been set, the remaining thickness may be built up with wet-mixed plaster, or cement, and reinforced as usual. With care this method may be successfully used to record even tracks in snow. A cast made in this way is never as strong as a wet-mixed one and must be handled with more care.

Should any difficulty be experienced in using the dry method, wet-mixed material can be used (except probably

in snow, on which this has not yet been tried), by first spraying the print with a solution of 1 part prepared floor shellac in 4 parts wood alcohol, using for the purpose one of the ordinary tin plant sprayers commonly sold for garden purposes. The spray must first be directed slightly upward, over the print, so that the air current may not disturb the loose ash or dust material until the spray dropping gently upon it has created a slight crust. This usually requires about 10 minutes of such spraying. After waiting 5 minutes to allow the shellac to dry somewhat, the sprayer may be pointed directly at the print and the spraying continued for 15 minutes longer. As much as a quart of shellac solution may be required for this treatment. After a half hour's drying, wet-mixed plaster or cement can then be poured into the track. Even tracks on a dusty board floor can be recorded by the dry plaster or shellac-setting methods. When such a track has been set by shellac, if a section of the board can be sawed out, the original track thus set can be used, with careful handling, as evidence in court, if desired.

To make a replica of the original track from a cast the upper surface of the cast should be as level as possible. The cast should be washed clean and then greased, either with an oil which is fluid at air temperatures or, if thicker, heated until it is very fluid, so that no crevices or other marks may be filled up and thus be obliterated in the replica. The greasing is to prevent sticking. The cast is then laid, top down, in a suitable box or other flat-bottomed receptacle, and wet-mixed plaster or cement flowed over it, and reinforced, as in making a cast.

In handling either plaster of paris or cement in this work it must not be forgotten that casts are still moist and weak for some time after they set. Casts are not sufficiently dry and strong to bear any but the most careful handling within a week after they are made. Shrinkage is negligible (under 1 per cent) in both plaster of paris and Portland cement, and casts or replicas made as above will exactly duplicate impressions copied. But shrinkage will occur in clay or adobe in which a track is preserved if it dries out before the cast is made. Either the original track or a

replica so made may therefore be expected to be slightly too small to accommodate the boot or foot which made the track by the time it gets to court, and care should be taken not to allow a jury to be prejudiced by this fact.

Sometimes it is desirable to make an original track, as for example by the shoe or boot worn by a suspect in committing an offense, for direct comparison with a track found at the scene of a crime, or with a replica of the latter; or to make an original and from it a cast to compare with one from the latter. This can be done by using, in a suitable shallow box, either a clay soil which will take a good impression and thereafter stand handling, or, much better, by using the composition called modeling paste. To prepare the latter stir 2 pounds of common gloss starch in a little cold water until it is entirely smooth and free from lumps. Then add hot water and boil, stirring constantly to avoid burning, until it is about as thick as can be stirred. Remove from the fire and, after letting stand for 5 minutes, stir in, a little at a time, 1 pound of table salt. After cooling for an hour the surface of the paste will have assumed a rubbery consistency and will take a fine impression, by stepping in it with the shoe exactly as would be done in making any ordinary track. Considerable shrinkage occurs in further drying, but no more than occurs in clay of a similar consistency. The composition becomes stiff and leathery and will keep for a long time, although it will crack as it dries and hardens. A plaster or cement cast can easily be made from a print in it. It will stick, however, so that it can not be removed without destroying the matrix. Removal is best done by washing off the composition from the cast, the former being quickly softened and disintegrated by water. An original track can not be made successfully in plaster of paris. Cement is believed to be usable for this purpose, but no experiments have been made to determine the best methods of procedure.

Little of value is in print on the preceding methods of recording footprints. A large part of the above has been determined by original experiments, done chiefly by Mr. Brereton. Quite as much that is new can be learned in

almost any line of our work by anyone who will experiment for himself to find out. It is hoped that many Law Enforcement men will try experiments in some line of the work and report results for the benefit of all.

If it is not feasible to secure the footprint itself, or a cast of it, the best remaining method is to photograph the track. The camera lens must be exactly parallel to the surface photographed, to avoid distortion of perspective. This can be done most conveniently by the aid of a clamp for attaching a camera to a board or other similar support at any required angle. (See Appendix A.) For use in court the photograph can be enlarged to the exact size of the original. If in photographing, however, a rule is placed alongside the footprint, the scale of measurement will appear in the photo itself, regardless of the size of the latter.

If no better method is available, draw an exact diagram of the track, on cross-section paper, if possible. For measurements use two lines at right angles through important detail points of the track, and parallel to cross-section lines. The perpendicular distances from any point to these respective lines will then absolutely fix its position.

FINGER PRINTS.

Few people are acquainted with the value of finger prints as evidence. They are very valuable, where they can be obtained; give absolute identification; are easy to use. They are produced by the oily impression of the minute ridges on the surface of the skin, and are left even when hands are clean, although very faint when the skin is dry or immediately after washing it with soap. They may be found on anything a man handles which has a smooth enough surface (as papers, cans, bottles, drinking glasses, etc.), if they have not been obliterated by subsequent handling, and can be made visible by appropriate treatment any time within several hours after they are made, but the sooner the better.

How to manipulate.—Sprinkle a powder of contrasting color on the surface containing prints. Distribute by tapping from a camel's-hair brush or by patting with such a brush (but don't rub), or by agitation on the desired sur-

face. Blow off the excess. Where the skin ridges touched the surface the powder will remain. Powders used by police officers are aluminum (preferably 10,000 fine) and bronze, one or other of these forming sufficient contrast with almost any color. With expert manipulation these give the best results. Dragon's blood powder, for light surfaces, and talcum powder or gray chalk for dark, seem to work better, however, for those not expert in manipulation. All of them can usually be obtained at drug stores. When these are not available, powdered charcoal, or *very fine* pencil scrapings, answer for light surfaces; borax, even flour, for dark surfaces. But all powders must be dry; they pile up and work badly if damp.

Prints thus developed are easily smudged by friction. They can be set by spraying lightly with a solution of 1 part white shellac (prepared floor shellac, not solid gum) in 4 parts wood alcohol. Dragon's blood, however, can be set, without the use of shellac, by heating slightly with a match flame, after application to the desired surface.

On a large surface, when it is not known where the finger prints may develop, they can be brought out in a brown color by heating the paper or other surface in a closed box with iodine crystals; the prints can then be recorded by one of the above powders, the iodine color vanishing after a time.

Identification.—The pattern of the skin ridges is different for every individual, and for all 10 fingers of every individual. The lines fall into classes such as arches, loops, and whorls, which have been minutely classified for police records; but nothing is necessary for identification except a close examination and comparison, which anyone can make. This is easier with a hand lens. The latter is an extremely valuable aid to an investigator. The "barrel" type is best and can be obtained on official requisition. For use in court, photographic enlargements of finger prints are desirable, so that the jury can all see the same one at the same time. Prints submitted to the district office will be enlarged on request.

Except after a man is arrested, we can not compel him to submit to making his finger prints. His known prints for comparison with ones found in connection with a crime

must otherwise be obtained by getting him to handle some paper on another pretext. If this paper has typewritten matter on it, this may obscure a thumb print, but the finger prints will be on the reverse. Such paper must of course be free from previous finger marks. It should therefore be drawn from inside a new pile, and be handled only by the corners, and between the first and second fingers, as the sides of the fingers leave little mark; better still, use cleaned gloves. When prints can be compelled, as from a man under arrest, they should be taken by pressing the finger on a stamp-ink pad and then on paper. Prints should be taken for all ten fingers and thumbs. However obtained, each print must be labeled as to finger and hand, since comparison is fruitless unless it is certain that the prints are of identical fingers. Skill in both making and identifying prints requires practice. Better do it before important results depend on your work.

RESTORING MUTILATED PAPERS.

Piecing torn paper together.—First hunt for corner pieces, then edges, then work up the interior. Paste on a transparent medium, as tracing linen—the back may be important—or lay on a glass plate, lay another over and bind together. Clean the glass first.

If writing on paper is not in copying ink or indelible pencil it can be moistened, by spray from an atomizer or by holding in steam from a tea kettle. This helps to straighten it out, if badly curled or bent.

Dim writing comes out plain in a photograph.

Worn or fragile paper can be made indestructible for handling, by dipping into a solution of 1 part stearine in 3 parts collodion, and letting dry 15 minutes.

Restoring burnt paper.—Writing is usually still legible. If not entirely reduced to ash, it can generally be used; but it is very fragile. Lift up by passing another paper beneath. Moisten as above, to remove curl. Slide onto a piece of gummed tracing cloth and very carefully press down. Trim the tracing cloth to exact edges of paper, then piece together as in the case of torn papers. Burned papers are very fragile, even when gummed. The whole process requires skill—better practice in advance.

TAKING IMPRESSIONS.

Relief impressions of raised surfaces can be taken by using moist blotting paper and letting it dry in position. Impressions of more uneven, or solid objects, may be obtained by a similar use of a mass of wet tissue paper.

PRESERVING PERISHABLE EVIDENCE.

Perishable evidence is often best preserved by placing it in cold storage. It can often be preserved, also, in alcohol. In the absence of cold storage, formalin, or formaldehyde, is best for fish or game meat. These preservatives destroy color, however. If this is important, wire the District Forester for advice, stating color and exact nature of material. If it is impossible to preserve any article of evidence, be sure to have witnesses to its finding, and its nature or identity, while it is yet in its original condition.

MAKING USE OF EXPERTS.

To the layman, one of the most striking services of the expert is that of the microscopist, who deals with a world invisible to the unaided eye. He can tell from a hair, for example, whether it is from deer or beef, horse, dog, or human, and the race, habits, and probable age of an original human possessor; from carpet sweeping dust the number, age, character, habits, food, and recent occupation of, as well as visitors recently entertained by, the occupants of the room from which taken; from finger nail deposits the food, occupation, habits, and whereabouts of the person from whom they are taken, for a week or so prior to that time; and often substantially the same information from a shred of clothing, or even knives or other articles much handled by him. They can identify beyond question deer or other game meat or blood as against beef, chicken, etc., and often such things as soil on a boot as being the same as that taken from the locality of a fire or other offense, hair on a blanket as that from a particular horse, or human hair as that from a certain suspect, etc. Manure dropped by an animal being

tracked may be a valuable clue, since the microscopist can support the Forest officer's judgment by certain determination of the kind of animal from which it came and the food materials represented.

But the microscopist, chemist, or other scientist, are not the only experts who can serve us. The dentist (as to teeth marks, etc.), the shoemaker, the blacksmith, the locksmith, the printer, or other paper expert, the observant clothing or dry goods merchant, or any other man who works in some special line, can often tell us more than we can see ourselves respecting some clue relating to their specialty. We must be constantly on the lookout for chances to make use of such help. Anything requiring expert help of a kind not locally available should be submitted to the District Forester, or the matter taken up with him, unless it is possible to get quicker help, for example, in the case of finger prints, from the experts of the police department of some nearer city.

It should also be borne in mind that expert testimony, which is usually in the nature of opinion rather than fact, must be given by the expert responsible for it and not by proxy, and arrangements should be anticipated for his attendance at court.

VERBAL AND DOCUMENTARY EVIDENCE.

Material clues or objects of evidence will seldom or never be all that is necessary to prove a case. If no material clues can be found, the only recourse, indeed, is to lie low and mouse around until some person or persons can be found who know something about the offense and its commission or committer. This takes time, patience, and skill, often more than the administrative ranger feels he can spare; but it must be done. Sometimes, however, he can not do it because the whole community knows him, and the guilty ones and all their sympathizers would soon know what he was after. In such cases a special man, whom nobody knows, will probably have better luck, and the assignment of such a man may be requested.

GETTING A LEAD.

In deciding to whom to go for possible evidence the best guide is again a carefully built up mental picture of the case—a working theory.

If possibilities permit, eliminate at once the busybodies, who always know all about it but generally know nothing worth much, and go after those who really know most, or were first on the ground. If nothing better develops, figure out a tentative suspect, on some ground, such as most probable motive, and start on that basis. If your tentative suspect should not be the right one, questions implicating him are likely to draw from an honest witness indications as to the true suspect, when he would not have given them in reply to general questions.

Before doing these, it will be desirable, however, to get preliminary information, as a protection against witnesses lying or otherwise trying to mislead. It is indispensable, as soon as any real line-up begins to appear, to consider every scrap of information which is at hand or can be gleaned, with respect to family, business, or friendship relations of possible suspects, so as to safeguard giving away anything unwittingly. Use every opportunity to get from fair-minded witnesses information on the trustworthiness and connections of others who must be dealt with.

HELPS TO INTERROGATION.

Knowledge of men.—Nothing else can take the place of knowledge of men in this work. "A witness will tell nothing or make but inaccurate and unimportant statements to an investigating officer without shrewdness and tact, while the very same witness will make precise, true, and important statements to an officer who can read and knows how to handle him." (Gross: Criminal Investigation.)

Witnesses can be grouped broadly into two classes, those who will tell the truth, and those who probably, or certainly, will not do so. This resolves itself chiefly into a question of motive. Persons having no interest in the offense or the offender will generally tell the truth; the testimony of those who have such an interest should at

least be taken with one's weather eye open for squalls. However, it should not be overlooked that one of the latter class may be upright enough to tell the truth if forced to do so, while fear of consequences may swerve a weak-kneed innocent from the path of truth.

Truthful witnesses may again be divided into those who are willing to tell what they know and those who are reluctant to do so. Most people are of the latter kind; the average American not only has an exaggerated unwillingness to "peach," even on a wrongdoer, but is himself so busy that he doesn't want to get mixed up in other people's troubles if he can avoid it. The person who is anxious to tell on another, unless young and unsophisticated, has usually some grudge, whose influence on his truthfulness must be weighed hardly less carefully than that of friendship for the offender.

We can help our own judgment of men by systematic study, in our everyday business, of truthfulness, the motives of untruthfulness, etc. A careful study of cases where we believed and were double-crossed will reduce our own credulity. Lack of truthfulness is very common, and a man is not always in league with crime who fails to state the exact truth. On inaccuracy see page 48.

Study of any previous court testimony of a lying witness helps. A man nearly always sticks to the same lines of mental side stepping in such things as justification of his own conduct, throwing suspicion on others, etc.

Reputation.—Few things help more than a reputation on the part of the investigator for getting men when he goes after them. If wrongdoers and their sympathizers can be made to feel, "Well, if that Forest Service man is on my track, the jig is up and I might as well tell the truth," the game is nearly or quite won at the start.

Attitude of officer.—Much of the success to be gained depends upon this. Judge your man. Be short, snappy, commanding with the bold; patient and considerate with the timid. Unnecessary officiousness, or insolence, or contempt, however, will shut up most men like a clam. Courteous and considerate treatment will open a man's heart—and probably his mouth—especially if others have just treated him harshly. A combination of these two is

the basis of the police method of "fall guy and oozer" for extracting confession.

Who should do interviewing.—The same investigator should ordinarily handle all the main issues of a given case. This applies especially to the principal interviews. After a case once takes shape, success depends so much upon a comprehensive knowledge of everything previously developed that important issues can not safely be divided.

INTERVIEWING TRUTHFUL WITNESSES.

Getting the witness to talk.—Few witnesses are anxious to talk to an investigative officer. "Rapport," as the police call it, or getting a man to the point where he will talk freely, can often be established more easily by directing the conversation along lines in which he is personally interested, even though at first this has no connection with what you want him to ralk about. A little flattery will often open the door which stays locked against unrelieved "business."

If he still does not tell what you believe he knows, it may be that he fears you want to mix him up in the crime. Such a suspicion should be guarded against, when unfounded. Antagonism can often be avoided by stating to the witness that you have been requested by headquarters, or are required by regulations, etc., to get the facts in this case, and will greatly appreciate it if he can tell you anything about it—thus putting it on the basis of routine duty, and dispelling any suspicion that you want to implicate the man addressed. If the reluctance is due to fear of the criminal, or desire to avoid the notoriety or loss of time incident to court testimony, and can not be overcome in any other way, tell him that, if he will tell you what he knows, you will only use it on the criminal, without divulging its origin; but if he won't, he will have to go on the stand and tell it in front of the criminal. The use of good evidence in whatever way seems best should not be hindered by such a promise if avoidable; but the use of information in the way indicated may be extremely valuable, and "half a loaf is better than none."

Getting the story.—There are two considerations: (1) To get as complete a statement from the witness as possible—be sure nothing essential is omitted, but don't let him ramble aimlessly; (2) to be sure he is telling the truth. The latter may not follow, even with willingness on his part.

The best safeguard is a clear mental picture of the case thus far, which shows us what we want to get, and thus prevents the omission of important items. The six watchwords of a complete case (see p. 30) are again valuable reminders.

The method to be used depends much upon the witness. But unless he wanders beyond forbearance, it is best to let him tell his story straight through in his own way. Then question and rehash until it is certain that he can not or will not add anything more of value. Take sufficient time, no matter how hurried you feel. Better not "start something" in the first place than be in too much of a hurry to permit getting the facts after you have started it.

Write it all down as he tells it—unless he shies at that; then do it at the end. In this case, opposition to having a statement written down may often be allayed by saying (along the same line as suggested in the preceding paragraph), "Now, I'd like to put this down, so that I can include it in my report and won't quote you wrongly." If rightly handled he will doubtless help you to get it all straight, and can then hardly refuse to sign it. A much more complete and satisfactory statement will ordinarily be obtained by thus writing it yourself than by letting him write it.

Read to the witness what you have written, word for word, ask him if it is correct, change any items which he may desire corrected, have him sign it, and have his signature properly witnessed.

In case a witness refuses to make or to sign a written statement, but will talk, get him to talk in the presence of several reliable witnesses, and afterwards write down the essential substance, as nearly verbatim as possible, of the first witness's statements, either yourself or in collaboration with the others, to which they will swear in court.

In addition to the record of what was said, put down in your notebook the circumstances of the conversation, persons, witnesses, time, and also all the conclusions for future guidance which you can draw from the facts thus learned.

Some men can not be induced to make a statement, but say if they are put on the stand they will tell the truth. If their resolution not to talk can not be shaken, the only thing to do is to try to get indirectly as shrewd an idea as possible of what they can testify about. Sometimes, however, things can later be learned which may induce them to change their minds and make a statement on a second visit to them. One of the most effective of such leverages is self-interest. For example, show him how it will benefit him to convict the offenders, or damage him to let them go free; or, even more effectively, when facts can be found to justify it, intimate that the criminal or his sympathizers are trying to implicate the witness in the crime, or otherwise damage him.

Legal bearings.—Unrecorded verbal statements are greatly strengthened by corroboration. Moreover, hearsay testimony by another as to a verbal statement of the accused can be used in court only when it has been made in the presence and hearing of the accused without being challenged by him. If B says that the suspect, A, told him that he (A), set the fire, this would hold; but to establish this fact on the testimony of C, we must, previous to the trial, have C make this statement in the presence and hearing of A, and also of other witnesses who can testify that it was so said. It is necessary to bear these facts in mind at the time of getting evidence.

Unintentional offenders.—The general methods indicated for truthful witnesses apply largely to this class of trespassers, such for example as those who thoughtlessly leave camp fires burning, especially if they are inexperienced and did not realize the danger. Courteous treatment and an evident purpose only to do one's duty, with regret for the inconvenience necessarily inflicted, are usually more effective than treating them like common criminals, and will often induce confession, with a readiness to "take their medicine" and not do it again. If more is necessary

to achieve this result, it should be remembered that every man has a "blind" side, a weakness through which he can be approached with his defenses down, or through which they can be battered down. It may be a hobby, such as horses, automobiles, guns or some sport, or politics, religion, reputation, even home or mother. Whatever it is, the officer is justified in using it to get the truth, when men have violated the laws of society, and are further double-crossing it by attempting to conceal the truth.

Only if the offense has shown criminal disregard of known danger, or if the unintentional offender becomes hostile or defiant, is anything usually gained by using the more drastic means discussed under "Hostile and Lying Witnesses." The man who has set a fire unconsciously is an unprofitable man to "sweat," because he has no guilty conscience.

If an offender is found on whom you have sufficient evidence, and he objects to being taken before a magistrate, a good expedient is to ask him if he is guilty; if he denies, then he has no valid ground for objection.

INACCURACY IN TESTIMONY.

Causes of inaccuracy.— When a man is willing to tell the truth, untrue statements may result from the following causes:

(a) Poor observation. A man may see only part of a total action and have a very inadequate or mistaken notion of the whole; a man sometimes sees what he expects to see; people often hear imperfectly or mistakenly.

(b) Poor comprehension and reasoning. Inference is a part of every mental operation. When we see a clock face, we take for granted a clock is behind it, but this is not necessarily true; a tenderfoot thinks mountains are much nearer than they are, because he infers the distance which the given appearance implies in low country; illiterate people distort long sentences, and piece out by inference to a twisted meaning.

(c) Poor memory. This is very common. Beware of people who remember everything; it is usually open to suspicion. Memory can be helped by talking of the events in question, often as to unimportant incidents, or of a

man's occupation connected with the thing to be remembered. But give him time; don't hurry. Do not press an emotional witness too far; there is real danger, especially with such a person, that you may make him remember what he never saw or heard or knew, except for your forcible suggestion.

(d) Influence of other people's statements. Untrained persons who have seen or known part of an exciting incident unconsciously try to complete the matter by fitting what they have seen or know to details told by others. They may even end, without untruthful intent, by weaving the whole garbled mess into their own story as what they saw and heard and know.

(e) Strong feeling. Excitement and fear tend to exaggerate, but sometimes overlook important details.

(f) Temperament, age, occupation. A ranger looking at a bunch of cattle sees also whether the range is overgrazed, or grazed in patches, due to poor salting or water development; a city man sees cattle, but not the other factors, and couldn't be expected to give an intelligent statement on such matters.

(g) Fear of consequences. Be sure to relieve a witness's mind of a possible impression that you want to implicate him, etc., if such inferences are without cause. Frightened people, imagining themselves suspected, always shuffle in testimony. This should be a danger signal, although the cause of the shuffling may not always be the one here discussed.

(h) Poor questioning. Good questioning requires hard thinking. Be sure nothing is missed. Follow your own course and do not be led or pushed, either designedly or accidentally, by the witness.

Increasing the accuracy of testimony.—Much can be done by careful questioning and suggestion to clear up obscure statements or supply omissions. Check the witness's accuracy; e. g., as to height of people, ask him if the man he mentions is as tall as yourself; check distances by asking about something in sight; verify his power of recognizing persons, estimating numbers, etc. It is sometimes necessary to verify statements one's self, inde-

pendently of the witness. Scrutinize the witness's testimony all the time for indications of intentional untruthfulness.

INTERVIEWING HOSTILE AND LYING WITNESSES.

Preparation for the interview.—For successfully interviewing this kind of witnesses thorough preparation is indispensable. Nowhere else is preliminary knowledge so essential, both as to the connections and interests of the witnesses and as to a thorough grasp of your case and exactly what you want to find out. Finally, the circumstances and conduct of the interview itself must be carefully planned.

If you can prevent it, don't interview such witnesses, especially the suspect, on their own ground or among their own friends. Get them to come to the supervisor's or ranger's office, or a convenient room in town; at least to a place away from the support of their familiar surroundings and people. This may not be feasible at the first interview; but if you are convinced, or become so by talking with them, that they know material facts which they have an interest in keeping from you, it is often wiser to postpone the serious attempt to get these until it is possible to do so under circumstances more favorable to it. On the other hand, it is desirable to question such witnesses, when possible, before they learn that they are suspected, and have had time to talk to each other. At least try to prevent such communication between the times you question separate ones. Special care must be exercised to interview a group of related witnesses in the best order to prevent "slopping over" between them. It is usually best not to interview two or more hostile witnesses together. Keep them apart and interview them separately, whenever possible. In coming up to two together, keep out of sight entirely, if possible, until close up to them, so as to give no chance for framing up something while you are coming.

Always conduct interviews with an enemy to your case strictly as an official. Be courteous, but don't introduce everybody all around, or joke or in any other way help to put the witness at his ease.

Especially, when the time has come to hammer hard for the facts, or for a confession, it greatly helps to surround the occasion with as much circumstance and formality as you can bring to bear. Have your own witnesses and assistants at hand; the more of them who are unknown to the person to be interrogated, or known only as officials, the better. A witness who is either the supposed criminal, or his accomplice or sympathizer, as is here assumed, will deceive you if he can, and will not tell you the truth if he can help it; i. e., unless you can tangle him, or otherwise bring pressure enough upon him to compel him to do so. One of the most valuable helps in this is to increase his nervous tension by every legitimate means.

Keep your notebook out and take time to record everything necessary or significant. Write down a minute description of suspects. This may be valuable to you, and should form a part of the case record in any event. If you ask him, in connection with this record, for his age, and other pertinent points, it will usually only help to increase his sense of the gravity of the case. Indeed, one can often gain much by sitting around and looking wise, notebook in hand, even after the necessary record is made, while the witness gets sufficiently nervous. But mental states go in waves, and it is possible to overstay the crest. The effect of everything upon the witness should be carefully watched, and the right moment seized to go ahead.

The interview.—This is always a test of wits; but the investigating officer has the whip hand, since the witness is usually playing a dangerous game, and this affects his calmness. Falsehood involves a frame-up. The necessary thing is to get behind the frame-up. The means by which this can be done is thorough questioning; perfunctory or aimless questioning will not do it.

Unless the witness has previously done so, or refuses to talk on his own motion, it is usually best to let him tell his own story once through, since if he is interrupted he will at once begin to trim what he says accordingly. This statement should be signed and witnessed, as in any other interview.

Then commence to question. In most cases this should begin at a point a considerable time before the

offense, and lead step by step in minute detail through it. The frame-up of a false case practically always revolves around an attempt to establish an alibi, and the easiest way to break this down is to question minutely about details—how long together, how seated, what said, order things occurred in, etc. When the alibi is true except as to date, we must get outside of it by connecting with dates some distance from the ones in question.

In questioning hostile witnesses the truth can often be dragged out by implying things you want to know, in questions not directly aimed at those items. For example, suppose a suspect is believed to have set a fire in a certain canyon while riding through it on a bald-faced bay horse which he is accustomed to ride. Both he and the horse are known to have been from home on that day, but no one has been found who actually saw him on the horse or in the canyon. He admits being away from home, but says he went to another ranch to fix water pipes. He denies setting the fire, but admits seeing the smoke. Then he should be asked, not "Did you ride through Nibob Canyon that day?" nor "Where were you when you saw that smoke?"—unless the following fails—but "Did you see this smoke before or after you rode into Nibob Canyon?" Also, not, "Did you ride the bald-faced bay that day?" but "Did your bald-faced bay get injured in any way while you were riding him that day?" If the witness really was on that horse or in that canyon, he will now not know how much you do know about it, and will begin to squirm.

As soon as we reach a point not contemplated in the frame-up contradiction will begin, which gives the officer a lead. In case a witness refuses to talk, show him that you have something on him. This will almost always start him to explaining; then it is comparatively easy to keep him going. When sure enough of your ground, you can begin to jump him directly with what you know to be false. Don't ask him if he did thus and so, but say: "You say you did thus and so?" and make him say yes; then, "I know better—you did thus and so." Make it clear that he can't string you, not by asserting it, but by demonstration. With some types of men, however, ground can be

gained by even more severity, e. g., "What do you mean by lying to me?"

To break the continuity of a man's frame-up thread is one of the greatest helps in getting the truth. To this end let questions skip around the story—end, then middle, and so on—or occasionally jump to something outside of, or beyond, his story.

In general, look for motives of lying—relationship, friendship, business connections, etc. Scrutinize the testimony itself, see how he colors other people, favorably or otherwise, as an author paints his hero or villain in advance of actual deeds. It is important to build a mental *picture of the witness's story* as fast as he tells it; this will show discrepancies not at all apparent from mere words—e. g., witness says his house was in danger of burning; but your mental picture shows that with the wind as already given, or as you know it to have been, his house was on the windward side of the fire.

All statements should be reduced to writing over the witnessed signature of the person questioned (or otherwise when that is not possible) as discussed on page 46.

The suspect in intentional offenses.—The written-out statement of an accused or suspected party should be followed by a statement that the foregoing is made by him voluntarily, realizing that anything which it contains may be used against him. This, of course, should not be mentioned until the statement is complete, since earlier it may shut him up before anything important is obtained.

In addition to the above methods, if there is any possibility of a suspect having a previous criminal record, the questioning should in his case go back as far as is necessary to include it, even to his childhood or his birth. This serves two good purposes. If he has any previous criminal record the questioning may open the way for prosecution on some other offense, if the intended one should fail; and with hardened criminals it should be a rule to get them on something, if possible, even if not on the offense under immediate investigation. Nothing will do more than this to give this class of men a wholesome incentive to refrain from violating the laws. Further, if there are shady spots in his record, close questioning will certainly

make him nervous about them, and if your questioning shows that you know something about an unsavory past record, he will forthwith be uncertain how much you know all along the line, and his nervous tension may materially help to bring out the truth as to the case in hand.

When the guilt of the suspect has been established to the conviction of the investigator, the chief object of such questioning becomes the forcing of a confession and a plea of guilt. Work to get him into the belief that you know all about it, or that someone of his pals has "squealed" and the game is up. But if you don't know as much as you lead him to believe you do, it is vital not to make a slip which will show him what you don't know. When used with judgment, one is justified in taking some chances of this kind to gain this advantage and land a confession. When a case gets to court, it must be complete and watertight, but up to that point the game is yours, to make by any fair means you can.

But here a caution; a much longer chance in this direction can, in general, be taken in camp fire than in incendiary cases. The former class of offenders are usually less independent in face of representatives of the law, and they are usually non-residents of the Forest community. The incendiary, however, is usually a resident, has less fear of an officer, and by reason of having planned his act beforehand, is definitely prepared to beat you at the game and is likely to know much more nearly what you can do and what you can't do. In this case, if you lose and have pulled a bluff which failed, it may set you and the Service back very seriously in the community's estimation.

Threats and promises.—Both of these must be scrupulously avoided, since either one will completely invalidate a confession in court. In the grilling, for example, it is legitimate to say, "I've got the goods on you; now what are you going to do about it?" but never, "I've got the goods on you and I'm going to cinch you." Even the use of the words that it will be "better" or "worse" for the suspect to do a given thing must be avoided. If a suspect feels for immunity or clemency as a preliminary to confessing, it is legitimate to state that you (or the officer in charge) will be willing to say a good word for him if he

makes a clean breast of it, but promise nothing as to final action.

In any event, we must play clean. Neither our self-respect, nor the respect of the community in which we must work and live should be jeopardized by resort to questionable practices.

Use of the law on perjury.—For persons who still refuse to confess, or admit the truth, the following is often effective. Referring to your notes of their conversation, say, "Are you willing to make an affidavit that you are not guilty in this case?" or, if this has been done, "You are still going to swear to this in court?" Then, "You probably know the Federal law on such testimony?" Read aloud the statute respecting perjury (page 8), emphasizing the heavy penalties provided. If they have lied, this seldom fails to start them hedging, and finally to bring a confession. Care must be used, however, not to give them any come-back in court by doing this as a threat. It is always an officer's right to inform persons of the law.

Keeping temper.—Always keep your temper. A man who loses his temper is at the mercy of a cool opponent. You can't afford it, no matter what the provocation; the accused may be trying to "get your goat" that way.

VALUE OF CONFESSIONS.

A confession is not admissible in court unless it is made of the prisoner's own free will—i. e., free from promise or threat, and without misapprehension as to its possible use against him. For these reasons it is always liable to successful attack by the defense, even if the accused does not repudiate it in court. The latter can be guarded against by having witnesses to its making, and in event the prisoner is discharged by the court, it may then be possible to convict him for perjury. But whatever the fate of the confession itself, it should always be obtained, or tried for, since it may always bring out valuable admissions or facts, which can then be run down and established by independent evidence, which makes them as valid as any other facts similarly established; and its established contradictions will likewise be of the greatest value in court. After getting a confession, the questioning should be continued,

to obtain such facts, if they have not already been obtained. If you can stay friendly enough with the accused to get him to tell you just how the deed was done, not only will this object have been attained, but you will have reinforced your own knowledge of criminal methods and motives. Write down all such conclusions and lessons for future guidance.

IDENTIFICATION OF PERSONS.

Forest officers usually know their local incendiaries; but they may need to spot persons unknown to themselves, such as hunters or campers responsible for fires, or I. W. W.'s.

The face of course is most relied upon. The main point of the identification method used by experts, and the one most often overlooked by laymen, is careful study of details. Not only color of hair and eyes, general shape of head and face, clean shaven or otherwise, must be noted, but as to ears, contour, rims, fleshiness and amount of lobes, and angle made with head (including aspect from behind); contour of chin and jaw from front, protrusion or recession in profile, "double" chin or otherwise; type of mouth, peculiarities of teeth, thickness of lips, peculiar twists and habitual lines surrounding, if any, and characteristic expression; contour of nose, both front and profile, especially character of its point, and width, flare and exposure of nostrils; eyes close or wide apart, how framed in head, size, external peculiarities such as character of lids, etc., appearance of cornea, size of pupil, and especially behavior and expression of the eye; color, thickness, length, and disposition of the eyebrows, especially how nearly they meet across the nose; contour and slope of forehead, especially if any prominent bulges over eyes, etc., and characteristic wrinkle marking; outline of edge of hair and its manner of growth; moles, warts, wens, scars, or other peculiar markings. These, of course, are in addition to the manner of carrying the head, etc., which falls with many other bodily characteristics which, in the total, give much aid in identification.

When it is a question of identification from an indistinct photograph, or one several years old, the most un-

changing items are the following: Angle of spread of ears and conformation of their lobes; type character of mouth and lips; conformation of end of nose, spread and exposure of nostrils; width apart of eyes; degree of approach of eyebrows across the nose; characteristic bulges of the forehead, if any; and the peculiarities of the hair line (barring change by baldness, which is usually discernible if present). These features, too, are the most useful for detailed verification of an identification from description, and should be obtained in such a description, in addition to the common items of age, height, weight, complexion, eyes, hair, beard or mustache, birth or accidental marks, clothing, carriage, gait, and general appearance.

Few people can give a good description without coaching. Even if asked if there are any noticeable peculiarities, they are likely to say no; and yet as soon as asked about eyes, nose, mouth, ears or hair, will remember something useful. Ask about the specific points discussed above.

Plain clothes work.—Forest officers will have only infrequent need to use the police supplemental devices to identify suspects, so that only a suggestion or two will be indicated here. An officer usually first follows and studies the suspect from behind, then gets ahead (by street car in cities) and comes to meet him. If he is sure enough, he accosts him by his real name, watching closely for response. No matter how a man steels himself against it, it is almost impossible to avoid some visible surprise response when an alias man hears his true name called unexpectedly. If the officer is not ready to show his hand, he often follows a few feet behind a suspect, and an assistant a little behind himself; the first officer then (being at inside of walk) calls the suspect's name sharply and dodges inside a doorway. If the suspect turns, he does not see the officer, and the assistant when he passes the door can tell the latter whether the suspect has betrayed any response. In shadowing, most police officers prefer to keep to the outside of the walk.

Such plain clothes work as Forest officers may have to do, is of a somewhat different kind than that of the city officer. But one caution holds; among any well-defined

class, as I. W. W.'s, for instance, one can never get far enough to learn much unless he can speak their lingo.

VALUE OF REWARDS.

When rewards can be offered (see page 16) considerable help in the fire situation can be given by greater publicity in regard to available rewards for assistance leading to convictions. Nearly every community has a would-be Sherlock Holmes, usually a constable or deputy sheriff, and many such men would work faithfully on our cases and be valuable allies, once they definitely knew that they stood a chance of getting a reward commensurate to the time spent. If so, let them have reward and credit both; results are what we want, and no Forest officer's official credit will be less because of such an outcome.

COOPERATION.

Occasions may occur when Forest officers can render assistance to the Department of Justice or the United States Army, in reporting treasonable activities or seditious utterances, or taking into custody enemy aliens or others whose apprehension is desired by those departments. Immediate report of such cases should be made to the district forester and instructions awaited from him or from the department concerned, unless the exigencies of the case demand immediate action and the officer is sure enough of his ground to warrant it.

These departments are also anxious to cooperate with the Forest Service in its work in whatever ways are appropriate. Should any person whose apprenhension we desire to effect flee to any of the large population centers, where it is inconvenient for us to go or send for him, it would be well first to inform the district forester, by whatever means of communication the urgency of the case requires, and you will at once be advised if any outside aid can be secured.

ACTIONS UNDER LEGAL PROCESSES.

AFFIDAVITS.

Most Forest officers are already familiar with the making of affidavits. These often can not be used directly as evi-

dence, being rather useful for their moral effect upon the witness as to the gravity of the testimony covered by the affidavit; it safeguards this testimony by giving us the handle of prosecution for perjury to prevent his going back on it. For form of affidavit see Appendix C.

ARRESTS; COMPLAINTS AND WARRANTS.

Under the acts of Congress of February 6, 1905 (33 Stat., 700), and March 3, 1905 (33 Stat., 872), Forest officers have authority to arrest upon warrant any person charged by a proper complaint with violating the Federal laws or regulations relating to the National Forests. For offenses under the State law, Forest officers have authority to arrest on warrant only after having been appointed deputy State fire or fish and game wardens.

For offenses committed in their presence, Forest officers have authority to arrest without warrant, in case of either Federal or State offenses.

Warrants of arrest.—For State offenses, warrant must be obtained from and returned to a State magistrate; that is, justice of the peace, police magistrate in towns or cities, judge of the superior court (county courts), or justice of the supreme court.

When the name of the person who committed the crime is not known, the magistrate can, for satisfactory cause, issue a John Doe warrant.

In Federal cases arrest should only be made in advance of indictment when this is absolutely necessary to prevent the escape of the accused, or when the offense is committed in the presence of the arresting officer. For the reasons of this statement see under "Preliminary Hearings," page 75. Federal warrants should ordinarily be procured from the nearest United States commissioner. If it is impracticable, or unduly expensive in time or money, to reach a commissioner, warrants in Federal cases may be obtained from a justice of the peace or other officer mentioned in section 1014, United States Revised Statutes, which is as follows:

For any crime or offense against the United States, the offender may, by any justice or judge of the United States, or by any commissioner of a circuit court to take bail, or

by any chancellor, judge of a supreme court or superior court, chief or first judge of common pleas, mayor of a city, justice of the peace, or other magistrate of any State where he may be found, and agreeably to the usual mode of process against offenders in such State, and at the expense of the United States, be arrested and imprisoned, or bailed, as the case may be, for trial before such court of the United States as by law has cognizance of the offense. Copies of the process shall be returned as speedily as may be into the clerk's office of such court, together with the recognizances of the witnesses for their appearance to testify in the case. And where any offender or witness is committed in any district other than that where the offense is to be tried, it shall be the duty of the judge of the district where such offender or witness is imprisoned seasonably to issue, and of the marshal to execute, a warrant for his removal to the district where the trial is to be had.

Complaints and informations.—Warrants for arrest from a justice of the peace are issued on complaint sworn to by a responsible person, upon a showing of probable cause sufficient to satisfy the issuing magistrate. The officer seeking the warrant should be able to show facts and evidence if necessary, and not merely information and belief. However, it is well not to divulge so much as to expose one's hand in the prosecution of the case.

The complaint must designate the specific offense committed and specify the statute and section violated, with such particulars of time, place, person, and property as to enable the defendant to understand clearly the character of the offense charged. Extreme care should be used in drawing the complaint, since not only the arrest but the case in court will be based upon it. In the wording of the complaint the language of the law invoked should be closely followed. Include only what you are sure you can prove; in a larceny case, for example, the exact items and numbers charged as stolen must be proved or the case will fail. Charge the easiest offense to prove, e. g., having game in possession out of season, rather than killing, unless evidence on the latter is ironclad.

Each offense under separate subsections of the statute should be made a separate count. Also, when more than one offense included in the same subsection is to be charged, charge always in disjunctive, e. g., "did kill *or*

have in his possession," not "kill and have," etc. This will avoid danger of the whole case failing, if it should prove impossible to establish one of the items to the satisfaction of the jury. If several men are taken for one offense, they should be charged jointly, since this saves time and expense in multiplication of cases.

In misdemeanor cases under the State law, the complaint must be filed within one year from the date of the offense. For form see Appendix C.

In case a justice of the peace, or county judge, refuses to issue a warrant when so requested by a Forest officer on valid grounds, or expresses hostility to the enforcement of the fire, game, or other laws which we must enforce, fines below the minimum, or otherwise fails to give proper official attention to our cases, the matter should be reported to the district forester and it will be taken up with the State attorney general.

A United States commissioner issues a warrant for arrest in Federal cases upon a sworn information. Equal care should of course be used in keeping this free from defect.

Service of warrants.—Warrants may be served by Forest officers having peace powers (see p. 5). Such service is sometimes necessary in the interest of speed, or of efficiency when judicial or police officers are lax or disaffected. But we should remember that we are primarily investigative officers, not police. Constables, sheriffs, etc., are the authorized agents of the courts in serving legal processes, and since their fees result from their performance of this work, not only can our own time and expense be saved, but often better relations with these men be maintained by turning over such service to them, whenever it is feasible.

But don't ask or expect them to work up your case for you. We are the investigators, and that is our business. Much past apathy to fire law enforcement on the part of public officers has been due to half-baked cases, or simple pieces of rumor or gossip, being taken to a justice or sheriff or prosecuting attorney, in the apparent expectation that they would do all the rest, and present us with a conviction and their thanks. Our work in 1918 is gaining us the reputation of bringing well-worked up cases. Let us keep it up. Nothing will more surely gain us the cordial co-

operation of public officers all along the line, and indirectly of the communities which they influence.

After swearing out the complaint it is usual to ask the magistrate when the arrest can be made, and, unless it is already known to the complaining officer, by whom. This enables the Forest officer to keep in touch with the progress of the service.

Limitations upon service.—A warrant of arrest is, in general, to be served only within the jurisdiction of the issuing magistrate or officer, unless otherwise specifically authorized upon the warrant. For list and jurisdictions of the several United States commissioners in California, see Appendix B. A warrant issued by a justice of the peace may be executed anywhere in the county where issued, outside of municipalities. The latter are expressly exempted from the operation of the State fire laws. (See p. 11.)

If the defendant is in another county, the warrant may be executed therein upon the written direction of a magistrate of that county, indorsed upon the warrant and signed by him with his name of office and dated at the county, city, or town where it is made, to the following effect: "This warrant may be executed in the county of.....;" but this indorsement can only be made when the warrant is accompanied by a certificate of the clerk of the county in which the warrant was issued, under the seal of the superior court thereof, as to the official character of the issuing magistrate, or upon the oath to that effect of a credible witness, in writing, indorsed on or annexed to the warrant. When it is foreseen that service of such a warrant may be necessary in another county, the county clerk's certificate above specified should be secured, if not too inconvenient; when this has not been secured the alternative personal statement above provided for can usually be made by the Forest officer himself, on the credentials of his badge and official position.

A warrant of arrest for a felony may be executed—i. e., the arrest made—at any time of day or night. For a misdemeanor, arrest can be made only in the daytime unless night service is specifically authorized in the warrant. Daytime, for such purposes, is defined as from sunrise to

sunset. Any close question on those times would be settled by the times as shown in the (United States Nautical) Almanac, which would, of course, be in terms of true sun time, not standard time (nor "daylight-saving" changes).

Service by telegraph.—Under the State law, a justice of the supreme court or a judge of a superior court may, by an indorsement upon a warrant of arrest, authorize the service thereof by telegraph, sending an authenticated telegraphic copy thereof, which is then as effectual in the hands of an officer as the original. Similarly a Federal judge may authorize the service of a warrant in a Federal case by telegraph.

The arrest.—Arrest is made by an actual restraint of the person of the accused or by his submission to the custody of an officer. It is usual to place the hand upon him and say "I arrest you," or words to that effect. The prisoner is usually, and on demand must be, informed of the cause of the arrest and the authority to make it, and shown the warrant when action is under a warrant. An officer acting under a warrant may use all necessary means to effect the arrest, if the accused resists or flees after being informed of the intention to arrest him. But he must not be subjected to any more violence or restraint than is necessary for the arrest and detention. In fact, all unnecessary officiousness or unpleasantness should be avoided, since much more can afterward be gotten, as a rule, out of a prisoner well treated, and there will be no chance for charges of bulldozing by his attorney. An officer making an arrest may orally summon as many persons as he deems necessary to aid him, and refusal to render such aid is a punishable offense. A United States commissioner can summon any necessary county, State, or Federal assistance to apprehend the person or persons for whom his warrant is issued.

When an arrest is made the person arrested should be searched, unless he is willing at once to plead guilty. In our work the value of search is not so much because of dangerous weapons, as (1) to secure articles which may afford good evidence, especially microscopic evidence in the case of articles, such as knives, etc., which have been much handled by the suspect; (2) for the effect of the search in impressing the suspect with the gravity of the

case, which is especially valuable if arrest is to be followed by "sweating." An additional aid in respect to the second point is the taking of a personal description of the suspect, which may well be done at the time of arrest. Search of a person under arrest requires no separate search warrant.

Peace officers making arrest on authority of a warrant, or when an offense is committed in their presence, are protected from any action for unlawful arrest. In the case of Forest officers, this protection will be invoked to the full by the district office.

Return of warrants.—When an arrest has been made the prisoner must usually be returned to the magistrate or other officer who issued the warrant.

In State misdemeanor cases, when the defendant is arrested in another county the officer must, if required by the defendant, take him before the magistrate in the latter county, who must admit the defendant to bail. When such demand is not made, or if bail is not forthwith given, the officer must take the defendant before the magistrate who issued the warrant, as above provided.

When arrest is without warrant, the prisoner must be taken before an appropriate magistrate as soon as practicable after the arrest. In a State case this may be whatever convenient justice of the peace within the county will give the case best attention; except that, if the prisoner demands it, he must be taken before the justice nearest to the place of arrest.

On arrival before the magistrate a proper complaint must be executed. Whether a warrant shall be issued upon it is subject to the discretion of the magistrate, in view of the course thereafter to be pursued. If a warrant is issued, its return is made simultaneously with its issue.

When a prisoner is brought to a State magistrate of final return, in cases over which he has trial jurisdiction, the charge is read to the defendant and if he pleads guilty he may be sentenced forthwith; otherwise a trial is had (if both parties are prepared and all witnesses are present) or future date is set for it.

In a Federal case, when an arrest is made without a warrant the person arrested should be taken before the nearest United States commissioner or, in case it is not practicable

to reach a commissioner, then before a justice of the peace or other officer mentioned in section 1014 of the Revised Statutes, previously quoted (p. 59). As in the previous case, return of warrant is made simultaneously with its procuring.

When a warrant for a Federal offense is returned to the United States commissioner or magistrate, as previously provided, either upon previous issue or arrest without warrant, the accused, after preliminary hearing or if that is waived, is bound over to the Federal court. If he is unable to give bond he must be delivered to the United States marshal.

SEARCH WARRANTS.

A search warrant may be secured by a Forest officer with peace powers (see p. 5) on his affidavit, from a justice of the peace or any other magistrate (district judge in Federal cases) for the search of any premises thought on reasonable information or belief to contain articles which it is desired to seize, or to examine, against the owner's will. A search warrant is equally as necessary, to enable an officer to lead out a man's horse and take measurements of his tracks, if the owner objects, as it would be to permit the seizure and removal of the animal. The same applies, strictly speaking, to search of a man's pack or buggy or automobile for evidence of having set a fire; but here is an important fact. Any game warden, or deputy, has the right to search anything but a man's person or residence, without warrant. This is a special authority limited to fish and game officers, and based on the fact of State title in fish and game. Most Forest officers are deputy fish and game wardens: if a traveler is suspected of having in pack or automobile (or barn, garage, corral, etc.) evidence of the setting of a fire, exercise the right of search for unlawful fish or game, and if any other evidence is found you are so much to the good. A warrant may then have to be secured, however, for the seizure of such other material, foreign to fish and game violations, as see below.

A search warrant must specify the exact premises, person or owner, and articles involved. Barns or outhouses, for

example, can not be searched on a warrant specifying the house only. If in searching for certain articles for whose seizure a warrant has been secured, other desired articles are found which the warrant can not be construed to cover, another warrant must be secured for their seizure.

Search warrants can only be executed in the daytime (sunrise to sunset) unless night service is specifically authorized by the issuing magistrate in the warrant. On definition of sunrise and sunset see page 62. Entry of premises or buildings may be effected by forcible means if necessary; but no more force must be used nor damage done than is requisite to accomplish the entry and search as authorized by warrant. For all articles seized the officer must give a receipt. It is always desirable to have outside parties other than Forest or police officers present at a search, if possible the proprietor or members of his family. This is a valuable safeguard against possible trouble in court.

In search by appropriate means under a duly issued warrant the executing officer is protected, even though it should develop that the search was made on misinformation; but he would be liable for the exercise of unnecessary violence or damage.

Permission can sometimes be obtained to search without warrant, by an officer clearly entitled to obtain such a warrant, especially if the person whose premises it is desired to search is amenable to the consideration that, even if one is innocent of connection with any offense, subjection to proper search is one of the duties of citizenship in aiding the processes of the laws which protect us all. If he still hesitates, ask him point blank if he is concerned in the offense and on his denial, point out that that constitutes the reason why he should not object; that objection will only make you the trouble of getting a warrant, and will justify a suspicion which will require the search to be more thorough.

If a search of premises is made without warrant, whether with or without the owner's permission, and anything is found which it will be desired to use in court, a warrant for its seizure should be secured as soon as possible after thus actually seizing it, or if there is no danger of its being

removed and secreted in the meantime, the seizure itself postponed until such a warrant can be secured, in order to forestall the attorney for the defense making trouble, or causing annoyance in court upon this as a pretext.

EXPENSES IN CONNECTION WITH LEGAL PROCESSES.

Forest officers will be officially reimbursed for all necessary expenses incurred in accordance with the fiscal and administrative regulations of the Department of Agriculture in the transportation of arrested persons to custody, or for necessary subsistence of such persons at hotels, etc., or for necessary expenses in the execution of any other necessary legal process for which no other authorities can properly assume responsibility, in the prosecution of violations of the laws, or of the regulations of the Department of Agriculture, on National Forests. (*See* Department Administrative Manual, p. 74, etc.) As has previously been pointed out, however, expense, as well as the time of forest officers for other needed duties, can often be saved to the Forest Service by making use of sheriffs and constables for the serving of warrants, subpœnas, and other such assistance. In particular, the hiring of men for posse needs, or to accompany officers for identification of witnesses, in State cases can appropriately be assumed by the counties, and its expense should by the above means be transferred to them when it is feasible to do so. If it is necessary for a forest officer to bring in a witness, the latter should pay his own expenses, if possible. Either the forest officer or the witness can in such duly authorized cases be reimbursed by the court under the conditions imposed by law; but no reimbursement for expenses in connection with witnesses can be made by the Forest Service. Certain other expenses, in connection with the trial itself, can sometimes be assumed by the sheriff or the United States marshal, as the case may be, or by other agencies of the administration of justice. It is impossible to make general instructions which will fit every contingency. In case of any doubt, specific advice should, whenever possible, be sought before incurring the contemplated expense.

PREPARATION OF THE CASE.

PREPARING THE MATERIAL.

When all possible or necessary evidence in a case has been run down and the necessary witnesses provided for, with a definite understanding of just what each will testify to, all these facts in the case must be put into systematic and workable shape.

REPORT ON FORM 856.

The first thing required is the report on Form 856, in accordance with the National Forest Trespass Manual. (*See* pages 15, 17, 19, above.)

THE WORKING MEMORANDUM.

For the purpose of the case in court a somewhat different organization of the material will be desirable, for which approximately the same form will apply, whether it be prepared for conduct of the case by the Forest officer, which he will doubtless be called upon to do in many justice's cases involving no legal difficulties, or as a memorandum for the district law officer in more important or difficult cases.

Several persons may be prosecuted together for the same fire, or any one alone (but see p. 61). Separate fires, especially if on separate days, should be reserved for separate cases, so as not to have used up all our ammunition if the defendant is unexpectedly acquitted on the first one.

The main case.—Arrange the material so that it tells the story in chronological order. Confine the main case to the material essential to a clear and complete chain of evidence. This gains the advantage of clearness of impression on the jury; too great a mass of evidence may muddle the main issue in their minds. Any additional material should be carefully worked up with a view to its use in rebuttal, or in connection with surprise defenses, as discussed below.

Have your record perfectly clear as to exactly what part of the chain the testimony of each witness and each piece of documentary evidence will cover, and just what link each exhibit will support. Avoid repetition as far as possible. Whenever it is necessary to mention again something already related, simply refer to it, with the page

on which it first occurs. If your record is to be used as a memorandum for the district law officer, the reviewer, if without other knowledge of the case, may otherwise have difficulty to determine whether such a rehashed incident is a new occurrence or one previously related.

Rebuttal, etc.—Here, one should anticipate what defenses may be set up and provide in advance for meeting them. The defendant will usually try to introduce testimony contradicting the testimony of the prosecution; but he may put in evidence unexpected facts tending to explain away or otherwise refute the evidence of the prosecution. The cross-examination offers the first opportunity of nullifying such evidence; if this can not be accomplished here, the prosecution may need new testimony to impeach the credit of the defendant's witnesses. On impeachment of testimony see further, pages 78 to 80.

Appendix.—A list of the witnesses, with brief notation of the exact facts to which each will testify, together with all documentary evidence and a list of exhibits, should be collected in an appendix, each separate item being designated by letter, as, for example, "Exhibit A." At the appropriate points in the narrative record, these documents, etc., should then be referred to only by exhibit designation. This helps both in completeness and in keeping the narrative clear.

Outline.—A good outline on which to get material together is the following:

1. The offense—what, where, when, how, by whom, why (motive).
2. Information.
    a. Rumors.
    b. Clues.
3. Main evidence—the facts, in order, with names of witnesses who will testify to them, as shown in detail in appendix at end of report.
4. Evidence available for rebuttal, or to meet possible surprise defenses.
5. Appendix—as above.

USE OF MAPS.

The trespass map.—The trespass map must show completely the facts of trespass, and damage suffered. It should include, therefore, land section, township and range, boundaries between National Forest and other lands, drainage, roads, houses and culture bearing on the case, area covered by the trespass, and, in case of fire, its origin with respect to Forest land boundaries; cover species or type, and size of timber, and nature and extent of damage. The investigator should not be required to make this map, if it can be done by others, as rangers in charge of suppression. When necessary on account of close questions of boundary the district forester will send an expert surveyor to make transit surveys.

The court map.—The map to be presented in court should be on a large enough scale to be legible when hung up so that the jury can all see it at once, since it is much more effective when used in this way. It should be confined to the data essential for the purpose, but it should show this with the utmost clearness. Its legend should also give its "*approximate scale*" and, if angles of view are material, a statement that these are correct. Every care should then be used to see that they are correct. Any "trespass" or other designation on the original, to which the defense could object as tending to prejudice the jury in advance, must carefully be omitted.

As to land boundaries, the proclamation diagrams of the National Forests can always be found in the biennial volume of the United States Statutes at Large, covering the year in which they were issued. Private land boundaries can be gotten from Forest Service status, and verified and certified by the United States land office if desired.

INVESTIGATION REPORT TO DISTRICT FORESTER.

For all cases made the subject of Law Enforcement Investigation, whether carried to court or not, a report in accordance with Appendix D must be made and forwarded to the District Forester. This report is short and is the only one regularly required for this office to enable it to keep in record touch with the work. If the case is carried

through the court by the investigating officer this report will be complete; otherwise it will end where the case passed into the hands of the district law officer, or was dropped.

Publicity.—Whenever this report is made, either in connection with a memorandum for the district law officer's consideration of a case, or as final report of a case conducted by a field officer, he should take special pains to note, as indicated in heading 8 of the outline in Appendix D, any special features that will help to make press publicity most effective. There are often special angles in such cases which can be used to the greatest advantage, and which only the man on the case can supply. If he desires to submit direct copy for this purpose, so much the better

Under this heading, also, should be included note of lax or adverse attitude of the justice who tried the case, or of constables, sheriffs, district attorneys, etc., who cooperated in the case, with any suggestions on avenues for action by the District Forester in stiffening up weak backbones or making hostile officials see a new light. (See also p. 61.)

PREPARING FOR COURT.

PLANNING THE COURT CASE.

When the case in court is to be conducted by the Forest officer, he will need also to plan in as much detail as possible every item in the procedure. This plan may of course be upset by unexpected moves on the part of the defense; but a plan definitely made in advance is the only basis of success. Such a plan can be changed to meet exigencies; but only wandering, and oversight of critical needs can result from leaving each step to be planned as you go.

The plan should include:

1. Scrutiny of possible jurors, and of any whom you should try to remove by challenge, if any advance line on the panel is possible.

2. Preparation of prosecution statement of the case (see under "Court Procedure" below). If the accused is to plead guilty this will be used as a statement of the cir-

cumstances of the case, for which the justice generally asks, to guide his sentence. If the latter does not do so, the prosecution should ask permission to make such a statement, unless it is reasonably certain that the court is already cognizant of, and sufficiently impressed by, all the essential features of the case. If leniency is recommended, on account of a confession, or of extenuating circumstances, minimum sentence should usually be asked. Reserve suspended sentence request for very special merit; too many of these are dangerous. (See circular EC–14 of July 16, 1918.)

If a jury trial will be necessary, one must also plan:

3. The exact order in which his witnesses should be called in building up the main case, and the questions which he will ask each one. When this is worked out in the rough, the whole should be studied in the light of the law of evidence (page 82) so that mistakes may be avoided.

4. In connection with what can be learned of the probable defense of the accused, who his witnesses will be and what they will testify to, your line of cross-examination must be worked out for each of his witnesses, in order to make the testimony accomplish as little for the defense and as much for the prosecution as possible.

5. Your own witnesses and their evidence in rebuttal, or for the purpose of impeaching witnesses for the defense or of counteracting surprise defenses.

Every care should be taken not to let the defense get knowledge of your plan.

GETTING AND PREPARING WITNESSES FOR COURT.

Subpœnas, etc.—The attendance of witnesses for preliminary hearing or trial is secured by means of subpœnas, which can be issued by any magistrate having cognizance of the case. Witnesses can not be arrested or bonded to insure their appearance in court; but if the witness after having had the subpœna served upon him does not so appear, he is in contempt of court and subject to arrest and all other penalties attaching thereto. Subpœnas can only be served by handing them in person to the person for whom issued. They can, however, be served at any time of day or night when he can be found. A subpœna issued

by a justice of the peace, unlike a warrant, can also be served anywhere in the State, without the necessity of specific indorsement.

Don't use witnesses from the Service any more than is necessary, especially if either justice or jurors are likely to be affected by hostility to it or its work. Select for witnesses persons of as high reputation as possible, since the defense will attack them if it can.

Preparing witnesses.—A definite understanding must be had with each witness as to exactly what he will testify to, based both on what he can testify, and what portion of this you will want his testimony on. His testimony must then be gone over, to insure, both that he will tell the exact facts, as desired, and that his statements will not be open to objections by the defense, which might destroy the effectiveness of the evidence, as well as mix up the witness; but care should be taken to avoid anything that can be misconstrued as "coaching," or "framing" of evidence. In connection with this work certain points are always legitimate, and should be clearly impressed upon witnesses.

1. On direct examination they should answer questions only, not explain. This will let the questioner be the judge of what and how much shall be said.

2. Except when it is based upon a written record, which can be referred to in court, testimony should not be too exact, especially as to time, but should be qualified by some such phrase as "to the best of my recollection." This will prevent giving a loophole for its discrediting by the defense on any points of nonessential exactness. If exactness is required on any point, see that you have a record to make it so.

3. When testifying from a notebook, or other record, do not read, word for word, but let the record be referred to as a guide or help to the memory on details. This is always permissible, whereas direct reading may raise annoying objections to the admission of the record in evidence.

4. Photographs must be introduced in evidence by the person who made them. On data necessary to accompany them see page 27. Enlargements must be accom-

panied in evidence by the originals from which they were made.

Other points may need attention, of which the following may be mentioned:

5. Testimony of conversations at second hand, especially with respect to statements of the defendant, can not be used in court (see page 83), except as noted on page 47.

6. Testimony respecting a confession should usually relate the conversation and the fact that it was voluntary, without referring to it as a confession, or to the signed statement, unless, or until, the examiner desires so to bring it in. On handling confessions see further, pages 79 and 80.

7. Testimony on matters requiring expert opinion requires the qualifying of the witness in court (see page 84), and the facts to be used as the basis of this qualification should be definitely determined with the witness.

A scientific expert usually tells the attorney what he has, and submits a list of questions, then together they thrash out what ones to use. The materials upon which expert testimony is based must, of course, first be placed in evidence by the witness who found them. A Forest officer, in respect to finger prints, for example, should testify that he found the given article, suspected it to contain such prints, developed them, and later secured the prints of the suspect. But no nonexpert witness will be allowed to testify as to similarities, or any other matter of opinion or conclusion. If it has not been possible to get expert evidence as to identification, the matter will have to be left there, for the jury to study and draw their own conclusions; except that the attorney or other person conducting the prosecution can take up the subject later in his argument to the jury; and if he has not been able to bring on an expert witness to testify to such matters, he may then draw out what would otherwise have been covered by them. This, however, is of course a less effective method than to have it covered by actual testimony.

8. Guard, as far as possible, against admissions by your own witnesses that the accused was drunk when the offense was committed, or that he is a monomaniac (e. g., in respect to setting fires). These constitute valuable de-

fenses which will be seized by the opposing side. If on their own motion they set up such a defense, every possible means should be used to counteract its effect on the jury, either by impeaching such testimony or by strengthening elements of the case showing moral responsibility. When such a defense is probable, prepare for it beforehand.

A case against a female defendant, or anyone with a bodily infirmity, must be exceptionally strong, since juries are easily swayed by sympathy in such cases. Every possible precaution should be taken to minimize the effect of possible appeals to such sympathies.

AMENDMENT OF COMPLAINT.

Should it be found, after having made all preparation, that for any reason, such as the failure to obtain a witness, some count will be impossible to sustain, or so weak as to make this improbable, or if at any time the complaint is found to be defective, application can be made for its amendment, or for the issue of a new one. The latter usually involves fewer difficulties.

PRELIMINARY HEARINGS.

In Federal cases action is better commenced on misdemeanors by an information filed in the Federal court by the United States attorney, rather than by an indictment; in the case of felonies, action must always be commenced by indictment of a grand jury. The binding over of a prisoner, previously arrested, to a grand jury necessitates a preliminary hearing to determine whether he shall be so bound or be dismissed, unless the prisoner waives the hearing; and if he has an attorney or knows his own best interests he will not waive it.

Preliminary hearings are undesirable, from the standpoint of the prosecution, for three reasons: (1) The prosecution must state its case, with witnesses, and thus show its hand, while the defense need not show anything; (2) the prosecution is thus under the expense of producing its witnesses once more than would otherwise be necessary; and (3) the commissioner, or magistrate, if unfavorable to the case, or perfunctory, can dismiss the accused instead of binding him over for trial. Such dismissal does not

prohibit his being brought to trial through other means, but it is a hindrance which should not be invited. Unless immediate arrest of the criminal is necessary, as discussed under "Warrants," the facts in Federal cases should first be submitted to the district law officer, who will, if the evidence warrants, initiate proper action through the United States district attorney and thus avoid the preliminary hearing complication. Arrest will then be made after the indictment is secured.

THE CASE IN COURT.

COURT PROCEDURE.

Only the procedure in justice's court, in which Forest officers may have to conduct their own cases, will be discussed here.

ORDER OF PROCEDURE.

1. Arraignment, reading of complaint, and taking of the plea; which is oral. The defendant must be personally present when this is done.

2. Impaneling the jury; unless a trial by jury is waived by consent of the parties in open court. The bailiff under instructions from the court summons 12 men to fill the jury box. If the jury is satisfactory to both parties it will be sworn. But either party may first examine the panel to ascertain whether there is cause for objection to any member thereof.

Challenges.—Upon challenge for cause any or all may be excused by the court if the cause alleged be deemed sufficient in the opinion of the court. The causes for challenge are numerous and are set out in sections 1071 to 1074 of the Penal Code. It is sufficient here to indicate briefly the more important, which are: Lack of any of the qualifications prescribed by law; unsound mind; previous conviction of a felony; bias. The first and third would many times be only ostensible causes. The most vital cause is really bias. This may result from relationship or friendship to the accused, or interest in the outcome of the case, antagonism to the Service or to Forest officers concerned or to fire or game prosecutions, or belief in burning as advantageous, etc.

Of peremptory challenges the prosecution is entitled to *five*, for which no cause need be shown, and the defendant is entitled to *ten*. Since peremptory challenges are limited in number, challenge for cause should always be first exhausted. In making a peremptory challenge, simply say to the court, "I would like to have John Doe excused"; never say, "I challenge John Doe."

3. Opening statement of the prosecution to the court and jury, outlining briefly what the case is and in general terms what the prosecution expects to prove.

4. Introduction of evidence by the prosecution, each witness for the prosecution being examined in the following order:

   a. Examination in chief, or direct examination, by the prosecution.
   b. Cross-examination by the defendant.
   c. Reexamination by the prosecution.

5. Prosecution rests its case.

6. Statement by the defense of its case, with a brief outline of what it expects to prove.

7. Introduction of evidence by the defense, each witness for the defendant being examined in the following order:

   a. Direct examination by the defense.
   b. Cross-examination by the prosecution.
   c. Reexamination by the defense.

8. Rebuttal, if any, by the prosecution.

9. Argument; prosecution opens, then defense, then a rejoinder by the prosecution if it so desires.

10. Charge to the jury by the court.

11. Verdict of jury.

12. Sentence or discharge of defendant.

EXAMINATION OF WITNESSES.

Direct examination, or examination in chief.—Witnesses are directly examined by the side for which they appear, to elicit the truth about the matter involved in the case, or so much thereof as will be calculated to benefit the case of the party calling the witness. One should know just what facts can be proven by the witness and ask only such questions as are necessary to bring out those facts.

Never ask a question without a definite object, and when the witness has given the testimony for which he has been called, discontinue the examination at once. With a favorably disposed witness, endeavor to put him at his ease. Adopt a respectful and friendly manner and begin by asking a few simple questions, such as name, place of residence, and business, in an ordinary conversational tone, giving the witness time to collect his ideas and get over the natural embarrassment which most persons feel when first put upon the stand. Then direct his mind to the matter about which his testimony is required, and after starting him on the right track, let him tell his story in his own way, with no more interruption than is necessary, since interruptions tend to confuse and irritate. If interruptions are necessary they should be made in a pleasant and even apologetic manner.

If it is necessary to call a hostile witness, one should adopt a more positive manner and should endeavor to make him state just so much as is required and no more. All attempts at explanation should be stopped by telling him that he will have an opportunity for making them as soon as he has answered all the questions. When this time arrives he will probably have forgotten most of them, and the others will prove less effective than if made in connection with the statement which they are intended to qualify. If the hostility of the witness is made apparent to the court he can and should permit leading questions (in which the answer is indicated by the question) to be asked in the examination in chief, although ordinarily one is not allowed to ask his own witnesses leading questions.

In introducing a map as evidence, if objection is raised by the defense on the score of accuracy, which can not otherwise be overcome, state that you merely wish to introduce this map to illustrate the witness's testimony.

Cross-examination.—The witness under cross-examination is of the opposing side; he is presumably adverse and is likely to say something damaging if given the opportunity. Therefore the rule never to ask a question without a definite object is doubly important. Indirect or camouflaged questions (as discussed on p. 52) are of the greatest service in cross-examination, to drag out facts which the witness will be on his guard against admitting.

The principal things to be guarded against in cross-examining are: (1) Permitting the witness to supply any omissions which he may have made in his testimony in chief; (2) permitting him to explain any apparent inconsistencies that he may have fallen into; (3) allowing him to repeat and emphasize his testimony given on direct examination; (4) asking any question which will give the opposing counsel opportunity to bring out on re-examination (which see) some unfavorable testimony which would not have been admissible but for the injudicious question put during the cross-examination.

It is well to learn all you can about the history of the witness you expect to cross-examine, as facts concerning his life or previous activities may enable you to either discredit his testimony or bring out facts to help your own case. The main idea of the cross-examination is to discover the weak point or points in the witness to be cross-examined. If the witness has, on direct examination, told a story which is known to be or is evidently fabricated, such fabrication can not be exposed by taking the witness step by step over the story as he told it on direct examination, but either by beginning to cross-examine concerning facts outside the story, or by skipping back and forth from one point in the story to another, or both, in order if possible to disconnect his fabricated train of thought.

If a defendant denies on the stand a confession introduced by your witnesses (as discussed on p. 74), the introduction of his signed confession statement by your side will help to impeach his testimony Its effectiveness upon the jury can be materially strengthened by the following ruse: First, appear to pass over the matter; then casually ask the defendant to write on paper a number of apparently meaningless words, such as "cat, dog, car, land, stone," etc. Some of the words included, however, are words whose initial letters, and certain syllables in them, are the same as corresponding elements in the defendant's signature. At the end he is asked to sign his name. If he has written his usual signature, it is then immediately shown the jury, side by side with the

confession statement and his signature appearing at the close of the latter. If he has been shrewd enough to suspect a ruse, and has disguised his signature to the list of words, this fact can be demonstrated to the jury on the spot, by comparing the signature with the corresponding syllables and letters appearing in the words themselves, and also showing that the latter do correspond with his confession signature.

Reexamination.—This is for the primary purpose of repairing any damage which opposing counsel may have done to one's case in his cross-examination of your witness. Advantage is of course taken of the opportunity to strengthen one's own case in any particulars in which the need for it may have become apparent, and in which it is possible to do so. But no new matters may be introduced, unless the opposing side has opened the way for them in questions on cross-examination.

Rebuttal, etc.—Rebuttal testimony, as the name implies, must be based on testimony already introduced by your opponent, which it is desired to refute or nullify. Additional testimony regarding a confession which the defendant has denied on the stand can, for example, be introduced in rebuttal. In such a case a witness on your side can then be asked the direct question whether he remembers a given conversation or statement. But no new material, i. e., matters for which the way has not been opened by preceding testimony, can be introduced.

One of the common methods of rebuttal is the impeachment of opposing testimony. The credit of a witness may be impeached in four ways: (1) By disproving, by the testimony of other witnesses, any facts stated by him which are material to the issues on trial; (2) by proof of his having made statements out of court inconsistent with his testimony (this being usable only if you have first laid the necessary foundation by interrogating the witness) in the cross-examination, about such contradictory statements; (3) by proof of any facts showing a bias or prejudice on the part of a witness in favor of the party by whom he was called, or against the prosecution (such as relationship, sympathy, or interest in the outcome of

the case); (4) by general evidence affecting the witness's character for veracity. (But see p. 83.)

Direct and reexamination by opposing side.—During direct examination, or reexamination, of their own witnesses by the opposing side, attention must be given to all the questions and answers. Notes taken of the testimony are very helfpul for one's own cross-examination of opposing witnesses, as well as for one's argument to the jury if such an argument is to be made.

OBJECTIONS.

The strictest attention is necessary, during examination of their own witnesses by the opposing side, to questions, both to see that they are properly put and to ascertain their design; and to the answers, so as to consider their effect, and to prevent any illegal testimony (see under "Evidence") from being received without objection. Good judgment and great quickness of perception are necessary, as well as familiarity with the law of evidence, to know exactly when and how to object to evidence. The making of too frequent and too frivolous objections is apt to have a bad effect on the jury, especially when they are overruled; on the other hand, many a case has been won by skill in invoking and enforcing them at the right moment.

Improper questions must be objected to before they are answered. If, however, the question be one which does not necessarily call for incompetent testimony but such testimony is in fact given in reply thereto, objection should be made, not to the question but to the answer, or to such part thereof as may be incompetent or irrelevant, as soon as this fact becomes apparent. When a question calls for evidence which may or may not be competent, the opposing counsel has a right to interpose and cross-examine the witness upon points material to the competency of his proposed answer; and when a question calls for evidence which may or may not be relevant, the questioner may be required to state beforehand the substance of what he expects to prove by the witness, in order that its admissibility may be determined. Leading

questions need not be objected to unless the answer which they suggest is material to the case and objectionable to the opposing side. In merely formal or introductory matters leading questions are not only unobjectionable, but rather desirable, as calculated to save time by bringing the witness to the point at once.

Objections to questions need not ordinarily be made to the court in the first instance, but rather by a good-natured caution to the opposing counsel. If he persists in offending along the same line, direct appeal to the judge is in order.

THE LAW OF EVIDENCE.

The rules as to what facts may be presented in evidence, how they may be presented, and their effect, constitute the law of evidence.

The general rule is that evidence, to be admissible in court, must be (1) relevant, i. e., directly related to, having a material bearing upon, the "facts in issue" (see below); and (2) competent, i. e., the proper kind of evidence by which to prove any relevant fact alleged.

FACTS ADMISSIBLE IN EVIDENCE.

Facts in issue.—In a criminal case whatever facts must necessarily be considered by the court in determining whether the accused is guilty are relevant, and evidence as to their existence or nonexistence may be introduced. Such facts are said to be "in issue." For instance, in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, the following facts are necessarily involved, that is, are "in issue," and may be proven: (1) That there was a *man-caused* fire at a certain time and place on the public domain, by which timber, underbrush, and grass were burned; (2) that this fire was set or caused to be set by the accused; and (3) that in doing this the accused acted willfully.

Facts relevant to the issue.—Facts not themselves directly in issue but which, being proved to the court, would establish conclusively the existence or nonexistence of the facts in issue, are called "facts relevant to the issue" and may always be given in evidence. This is circum-

stantial evidence. All facts so connected with a fact in issue as to form a part of the same transaction or subject matter (for instance, statements explaining an act and made simultaneously therewith); or as constituting a probable cause for it (as that the accused did or did not have any motive, or that he did or did not make any preparation for doing it); or as the natural effect of it (as where the subsequent conduct of the accused was such as to be apparently influenced by his having done the act); or as necessary to explain or introduce it, are admissible. Such facts are called in legal parlance "res gestae."

When, however, facts offered do not furnish conclusive proof of the facts in issue, but merely render their existence or nonexistence more or less probable, it is within the province of the judge to say whether they may be admitted. But the judge's discretion in this connection is subject to certain established rules, by which some classes of facts are always excluded.

Character, opinion, hearsay.—It is the general rule that character, hearsay, and opinions are irrelevant and not admissible, except in certain instances.

The fact of a person having a good or bad character is not admissible in evidence as the ground for an inference that he did or did not do a certain thing, excepting that in criminal cases the accused may show that he has a good character as a fact from which the jury may infer that he is not guilty. When this fact of character is put in evidence by the accused it may be contradicted like any other fact and the prosecution may show that he has not a good character by proof that he has a bad one. The admission of this evidence in rebuttal is in accordance with the principle stated under "Production and Effect of Evidence," page 86.

Hearsay is commonly held not to constitute evidence because, (1) it has not been made under the moral obligation of an oath, with the liability to criminal prosecution in case of falsehood; (2) the accused has had no opportunity of cross-examining the original witness in order to elicit his sources of information, as well as any facts which he may not care to disclose, and to test the general accuracy of his statements and to show if he has any bias; and (3)

the original testimony has not been given in open court where the jury might observe the demeanor of the witness while giving it.

There are certain exceptions to the rule excluding hearsay, the most important of which, from our standpoint, are (1) where it is rendered necessary by the difficulty of other proof (for example, statements of a dying person); (2) where the circumstances under which hearsay statements are made furnish some guarantee of their reliability other than the fact of their having been made; (3) where such statements are in the nature of confessions or admissions (which may or may not constitute hearsay). An admission, in general, may be either (a) a direct statement of main facts in issue, or (b) a statement, or act, from which inferences may be drawn as to main facts in issue. A direct statement, in criminal cases, of complicity or guilt in respect to main facts in issue is called a confession, and to be admissible it must be made voluntarily. No confession is considered voluntary if made under promise or threat from a person in authority. The term admission is usually restricted to involuntary statements, or acts (implied admissions), from which inferences can be drawn as to main facts in issue, and these are in the nature of circumstantial evidence. Statements which constitute confessions or admissions must be proved in the ordinary way by the introduction of testimony, oral or written, as to the language constituting the admission; and where they are also in the nature of hearsay, the precautions noted on page 47 should be observed.

Opinion is usually not admissible in evidence, except by an expert duly qualified as such. Such qualification is established in the direct examination, simply by asking the witness whether he has had experience in the matter in question (as in tracking, for example), how much experience, over how many years, etc. This may be done immediately after the opening questions as to name, residence, and occupation, if the testimony involving opinion is then desired; otherwise, whenever the point in his testimony is reached where it is desired to introduce the latter. The questions designed to bring out the testimony of opinion can then be proceeded with. It is not necessary

to make any formal statement of intention to qualify the witness as an expert. If the qualification as an expert has inadvertently been omitted, opposing counsel will doubtless object as soon as questions involving opinion are introduced; whereupon the qualification as an expert can be made, and the evidence in question admitted by the court if the qualifications be deemed sufficient by him.

KINDS OF PROOF BY WHICH FACTS IN ISSUE MAY BE ESTABLISHED.

Facts regularly proven.—It is the general rule that courts in deciding issues of fact will consider only such evidence as may have been presented by the respective parties, and will entirely disregard all facts not regularly proven; but to this rule there are two exceptions, the first being as to certain facts of which the courts take "judicial notice," or recognize as within their own knowledge without requiring any proof thereof; the second being as to such facts as are formally admitted by both sides. The latter class is not of so much importance in criminal cases as in civil actions, where a mutual agreement on such points may materially reduce the ground necessary to be covered by proof.

Primary and secondary evidence.—Ordinarily the most natural and satisfactory method of proving the existence or nonexistence of any fact is by the direct oral testimony of witnesses; but to this there are certain exceptions. Oral evidence may not ordinarily be given of any transaction of a public nature of which the law requires a record to be kept (for example, judicial proceedings must be proved from the records of the court and not by the oral testimony of persons who were present at the trial). The contents of a written instrument ordinarily can only be proven by production of the document itself. The terms of a contract or grant which the parties have reduced to writing and which is sought to be proven by one of the parties, must be proven by production of the document itself, except in certain cases. The general rule is that all facts must be proved by the best kind of evidence obtainable, called "primary evidence"; but under certain specified circumstances the proof of the contents of writings is per-

mitted—as when the original has been destroyed—by means of copies, oral testimony, etc., called "secondary evidence."

Along with oral testimony there may also be produced in evidence and identified by the witnesses, various things other than documents, which it is desired to have the jury inspect. Such documents and objects are designated as "exhibits."

PRODUCTION AND EFFECT OF EVIDENCE

As to parties by whom proof must be produced, it is obvious that the suitor who relies upon certain facts should be called upon to prove them. The general rule is that the burden of proof is upon the party who asserts the affirmative of the issue. In a criminal proceeding the burden of proof is upon the prosecution, which, in order to obtain a conviction, must prove the guilt of the accused beyond a reasonable doubt. The prosecution must produce its evidence first—and must exhaust its evidence in the first instance; that is, the prosecution may not first rely upon a prima facie case and after that has been shaken by the proof offered by the accused, call other evidence to confirm it. After the accused has concluded his proof the prosecution can only bring in further evidence for the purpose of contradicting the affirmative facts brought into the case by the accused, and may not attempt to prove his guilt by evidence of a state of facts different from that offered in the first instance.

Thus, if in the trial on an indictment of the accused for willfully setting on fire certain timber, underbrush, and grass on the public domain, evidence be offered that the accused set certain lenses designed to concentrate the rays of the sun on a bunch of matches surrounded by inflammable material, and that thereafter the fire occurred, and the accused should then offer evidence to the effect that the so-called lenses were defective and would not concentrate the rays of the sun, the prosecution could attempt to contradict this evidence of the accused, but could not offer evidence tending to show that the accused after observing the failure of the lenses returned and started the fire with a torch.

COMPETENCY OF WITNESSES.

All persons offered as witnesses are presumed to be competent to testify, until the contrary is shown to the satisfaction of the court. Objection to the competency of a witness must be made before his examination in chief, if the disqualification is then known to the party objecting, or if it is not then known, the objection must be made as soon as the disqualification appears. A witness may be incompetent owing to want of mental capacity, arising from extreme youth, disease, intoxication, or other cause. The defendant in a criminal case is a competent witness in his own behalf but is not compellable to testify. A lawyer is not permitted, except with his client's express consent, to testify as to any confidential communication made to him by or on behalf of his client during the course and for the purpose of his employment. Husband and wife are not permitted to disclose confidential communications made to each other during the marriage, even if the marriage has since been terminated by divorce or the death of one of the parties. Under the California law neither the husband nor wife is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties, except with the consent of both, or in cases involving violence upon one by the other (and those involving failure to support the wife or child).

EDUCATIONAL ACTIVITIES.

Enthusiasm in the work to which the preceding instructions are devoted must not lead us to forget the work of education toward fire prevention. This must now be pushed harder than ever. Each Forest officer will be expected to seize every opportunity to spread this gospel, by personal conversation, and not less by speaking at local gatherings, and to make such opportunities whenever a chance appears.

It is not impossible for any of us to make such talks. Oratory may help; but the only thing a man can really put across is *himself*, the things in which he works and lives and which, for the same reason, are near both to him and to his community people. These, told with the sim-

ple conviction born of them, will get farther than any oratory without them. And these are present to all of us. The need is here, and is great; we are the men who are here; and we shall be as any other slackers if we don't come across to meet it.

Personal appeal is always open and effective. Such appeal may be made in many directions; for example, to the patriotism of the stockman, in respect to both need of the resources which fire destroys and the labor which fire fighting takes from productive work. This appeal can be greatly strengthened by showing them how much their own self-interest is really served by fire protection,[4] and informing them of our now increased possibilities in construction of range improvements for them on the basis of mutual cooperation in stopping fires, as well as our decision to cancel the permits of those who do not meet us half way; and other measures of which you will be informed in more detail by the supervisors.

ACKNOWLEDGMENTS.

For many of the good points embodied in these instructions, the Forest Service is indebted to the following men, who have addressed the annual law enforcement conferences at the San Francisco office:

J. W. Stevens, chief of the Pacific Bureau of Fire Prevention, San Francisco; August Volmer, chief of police, Berkeley, Calif.; Frank McConnell, detective sergeant, police department, San Francisco; R. D. Duke, attorney for the California State Fish and Game Commission; Dr. Albert Schneider, microscopist, affiliated colleges, San Francisco; also to an excellent book entitled "Criminal Investigation," by Dr. Hans Gross, University of Prague, translated by John and J. Collyer Adam, Egmore, Madras, British India, 1906.

Nor would the completeness of the instructions have been possible except for the practical contributions and the enthusiastic help of the Forest officers who have participated in the conferences.

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[4] Many stockmen are reported to be beginning to see that the continued brush fires are undesirable from their own standpoint, killing out the good forage while the worthless ones survive.

APPENDIX A.

Equipment.

Speed in get-away will often be as essential in the criminal detection work as in fire suppression. Complete equipment should be kept in a carrying case reserved for this purpose. The only way to insure its completeness is to look over and replenish equipment *when you return* from a case, and not leave it until you want to start again. Have a list of what should be there pasted on the inside flap of the case. Equipment should include:

Law Enforcement manual.

Fish and Game Laws pamphlet.

Notebook (common red bound Form 289), pencils (one hard drawing), fountain pen if available, writing paper and a few envelopes, forms (expense, etc.).

Maps (general location) and square-ruled paper for making local sketches.

Compass (F. S., or else box *and* Abney level), pocket steel tape or light rule.

The above, except for the fountain pen, may be obtained on requisition through the supervisor.

Finger-print powders and containers, camel's-hair brush, atomizer spray and shellac solution, plaster of paris, and water glass if desired. These may either be obtained locally, price to be included in reimbursement accounts, or they will be purchased in San Francisco upon request. Except when otherwise requisitioned, the finger-print powders furnished will be dragon's blood for light surfaces and talcum powder for dark surfaces, together with shellac solution and atomizer for fixing the nonsetting powders. A leather case with compartments for the finger-print bottles is convenient but not necessary, and can not be officially furnished. Bottles will be furnished on requisition, of such size as to fit in a tobacco can which can be lined with flannel at home.

Cleaned gloves for finger-print work.

Camera and tripod are often of very great value. They should be included in the equipment when they are available. Films used for privately owned cameras in official work may be purchased officially. (See supervisor for

procedure.) In order that reimbursement may be made in the event of damage to privately owned cameras used in official work, application should be made through the supervisor for a contract of hire by the Forest Service.

The attachment called Universal clamp and tripod head, which permits attachment of a camera to boards or other supports at any angle, will be furnished on requisition for official use.

APPENDIX B.

Federal Courts and United States Commissioners.

The State of California is divided into Federal judicial districts as follows:

NORTHERN DISTRICT.

Commissioners in this district are:

	Address.
C. S. Baldwin	Alturas.
Geo. E. Bradnack	Dorris.
J. E. Ebert	Marysville.
Herbert South Gans	Red Bluff.
Thos. E. Hayden	San Francisco.
Francis Krull	San Francisco.
Silas W. Mack	Monterey.
H. R. McNoble	Stockton.
Irwin T. Quinn	Eureka.
G. R. Redwine	Covelo.
H. W. Scott	Hollister.
Richard Webb	Jackson.
Martin I. Welsh	Sacramento.
E. M. Whitney	Willits.

Divisions.—For Federal court purposes the Northern District is divided into:

Northern Division, comprising the counties of Del Norte, Siskiyou, Modoc, Humboldt, Trinity, Shasta, Lassen, Tehama, Plumas, Mendocino, Lake, Colusa, Glenn, Butte, Sierra, Sutter, Yuba, Nevada, Sonoma, Napa, Yolo, Placer, Solano, Sacramento, Eldorado, San Joaquin, Amador, Calaveras, Stanislaus, Tuolumne, Alpine, and Mono.

Court is held at Sacramento, second Monday in April

and first Monday in October; and at Eureka, third Monday in July.

SOUTHERN DIVISION, comprising the counties of San Francisco, Marin, Contra Costa, Alameda, San Mateo, Santa Clara, Santa Cruz, Monterey, and San Benito.

Court is held at San Francisco, first Monday in March, second Monday in July, and first Mondy in November.

SOUTHERN DISTRICT.

Commissioners in this district are:

	Address.
F. W. Benshoof	Riverside.
Chas. E. Burch	San Diego.
Garth B. Campbell	Fresno.
Wm. B. Chaplin	Bakersfield.
Daniel M. Hammack	Los Angeles.
H. W. Phipps	San Bernardino.
Chas. Post	San Bernardino.
Miles Wallace	Fresno.
H. L. Welch	El Centro.

Divisions for Federal court purposes are:

NORTHERN DIVISION, comprising the counties of Fresno, Inyo, Kern, Kings, Madera, Mariposa, Merced, and Tulare.

Court is held at Fresno, first Monday in May and second Monday in November.

SOUTHERN DIVISION, comprising the counties of Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, and Ventura.

Court is held at Los Angeles, second Monday in January and second Monday in July; and at San Diego, second Monday in March and second Monday in September.

APPENDIX C.

FORM OF LEGAL PROCESSES.

It is well for the Forest officer to be familiar with the proper forms of the legal processes with which he will have to do. Warrants, subpœnas, etc., however, will be prepared by the issuing magistrate and the Forest officer

will have no direct responsibility for their form; he will only need to be sure that they properly state the facts of the case, which he must properly have stated in his complaint (see p. 60). The correctness of the latter only his knowledge and care can insure, and he must therefore be thoroughly familiar with its requirements. On any doubtful points, especially of form, the magistrate will doubtless be glad to give him assistance; but he should not be entirely dependent on such help.

Complaint.—The following is an accepted form. The numbers (a), (b), etc., inserted in the blank spaces refer to illustrative wordings for different kinds of cases, following. These, however, should not be followed verbatim unless they fit the individual case; every case should be stated on its own merits.

IN THE JUSTICE'S COURT

of

.....TOWNSHIP, COUNTY OF.....

STATE OF CALIFORNIA.

The People of the State of California

.....Plaintiff,
v.
.....Defendant.

Complaint—Criminal. P. C. Secs. 806, 809, 1426.

Personally appeared before me, this.....day of .....,19..,.....of .....,in the County of .....,State of California, who, first being sworn, complains and says:

That.. (a) .. (b) .....of.....on the.....day of .....,19.., and before the filing of this complaint, at.....,in the said County of.....,State of California, (c) .. (d) .. (e) .. (f) .....

.....

.....

all of which is contrary to the statute in such cases made

and provided, and against the peace and dignity of the people of the State of California.

.....

.....

Said complainant therefore prays that a warrant may be issued for arrest of the said.....

.....and that..he..may be dealt with according to law.

Subscribed and sworn to before me this..... day of....., 19...

.....

Justice of the Peace of said Township.

Illustrative wordings:

(a) John Doe of Peanut, California,

(b) John Doe of Peanut, California, and Richard Roe of Milpitas, California,

(c) did in violation of subsection 1 of section 384 of the Penal Code of the State of California set fire, or cause or procure fire to be set, to forest, brush, and other inflammable vegetation growing on lands not his own without the permission of the owner of such lands, to wit: the SE SE Section 2, T 23 N, R 11 W, M. D. M.

(d) did in violation of subsection 2 of section 384 of the Penal Code of the State of California allow a fire to escape from his control, he having charge thereof, and spread to lands not his own, to wit: the SE SE Section 2, T 23 N, R 11 W, M. D. M., without using every reasonable and proper precaution to prevent such fire from escaping, whereby timber, brush, and other inflammable vegetation on said lands was burned.

(e) did in violation of subsection 3 of Section 384 of the Penal Code of the State of California burn brush, logs, fallen timber and grass on his own land without taking every proper and reasonable precaution to prevent the escape of the fire, whereby said fire did escape and spread to the lands of another, and did burn timber, brush, and other inflammable vegetation on such lands.

(f) did in violation of subsection 6 of Section 384 of the Penal Code of the State of California leave a fire burning and unextinguished upon departing from a camp or camping place in the SE SE section 2, T 23 N, R 11 W, M. D. M.

Affidavits.—A complete and satisfactory form is as follows:

State of California }
County of..... } *ss.*

John Doe, of.....
being first duly sworn, deposes and says:

.....

.....

.....

Signed.....
(Affiant)

Subscribed and sworn to before me at....., this.....day of....., 19.....

.....
Forest Ranger.

If the statement to which affidavit is desired has already been written, or if it seems undesirable, on account of the effect on the witness, to begin the written statement with the formality of an affidavit (see p. 46), the form of oath only, following the signature of the affiant, will be sufficient.

APPENDIX D.

Outline for Law Enforcement Investigation Report to District Forester.

(See p. 70).

1. Trespass case designation (or fire, etc., if case not carried to trespass status).

2. Name of trespasser (unless given in designation), and address.

3. Is trespasser a Forest user? if so, how?

4. Nature of trespass; location; size of area (e. g. in fire); date (unless given in designation).

5. (a) Was it prosecuted? under what statute? where tried? when? result of trial. (b) If not tried, what disposition was made of case?

6. Name of investigating officer (and assistants, if any); dates investigation commenced and closed.

7. Brief summary of evidence against suspect or defendant.

8. Suggestions for publicity on this case; and for action respecting justice, or other officer, if any. (See p. 71.)

9. Personal description of trespasser (in cases of conviction; or of aggravated malice, when not convicted): (a) age; (b) height; (c) weight; (d) eyes; (e) hair; (f) any other peculiarities aiding in identification; (g) occupation; (h) habits (especially if peculiar and having bearing on identification or apprehension); (i) general reputation; (j) associates; (k) additional remarks.

10. (a) Signature of reporting officer; (b) place and date of report.

APPENDIX E.

Mimeograph Additions.

Increased experience in law enforcement is bound to teach us new ideas. Everyone engaged in the work must contribute to the good of all by sending in such ideas and suggestions. These will be mimeographed and sent to all those using these instructions. They will be on sheets such that they can be pasted in immediately following the manual. Each new item will be numbered, and will be followed by the reference to page and line of these instructions to which it applies. Each holder of a copy of the manual will then be responsible for inserting this number, as given, in the margin of his copy at the point to which each addition refers. This is the only way to keep such additions useful and usable.

All such additions prior to the present issue of these instructions should be discarded.

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